

AUCKLAND INTERNATIONAL AIRPORT LIMITED

DUBAI AEROSPACE ENTERPRISE (DAE) LTD

MERGER IMPLEMENTATION AGREEMENT

RUSSELL McVEAGH

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PARTIES

AUCKLAND INTERNATIONAL AIRPORT LIMITED of Jean Batten International Terminal, Auckland International Airport, Auckland ("**AIAL**")

DUBAI AEROSPACE ENTERPRISE (DAE) LTD of Level 3, Building 4, The Gate Precinct, Dubai International Finance Centre, Dubai ("**DAE**")

INTRODUCTION

- A. AIAL is listed on each of NZSX and ASX. AIAL and DAE have agreed that MergeCo will amalgamate with AIAL by means of an amalgamation under Part XIII of the Act.
- B. The Amalgamation Proposal will provide that following such amalgamation MergeCo will be the continuing company and that Participants will receive a combination of cash and/or Stapled Securities. After the Amalgamation has become Effective DAE will own between 51% and 60%, and Participants between 49% and 40%, of HoldCo.
- C. It is intended that HoldCo will be listed on each of NZSX and ASX following the Amalgamation becoming Effective.
- D. This agreement sets out:
 - (a) the terms of the Amalgamation;
 - (b) the terms on which the approvals required for the Amalgamation will be sought; and
 - (c) the steps to be taken by the parties to implement the Amalgamation.

AGREEMENT

1. INTERPRETATION

1.1 Definitions: In this agreement, unless the context otherwise requires:

"**Act**" means the Companies Act 1993.

"**AIAL Group**" means AIAL and its Subsidiary and "**member of the AIAL Group**" means any one such entity.

"**AIAL Share**" or "**AIAL Shares**" means a fully paid ordinary share or shares in the capital of AIAL.

"**AIAL Shareholder**" means a person who is a holder of an AIAL Share.

"**Amalgamation**" means the amalgamation under Part XIII of the Act between MergeCo and AIAL to be effected in accordance with this agreement.

"**Amalgamation Proposal**" means an amalgamation proposal for the purposes of section 220(1) of the Act in relation to the Amalgamation.

"Applicable Regulations" means applicable laws and regulations (including Listing Rules of ASX and NZSX), and directives, notices or requirements of any Governmental Agency having jurisdiction over AIAL, DAE, HoldCo or MergeCo, as the case may be (but, if not having the force of law, only if compliance with such directives, notices or requirements is in accordance with the general practice of persons to whom they are intended to apply), and for the time being in force or applying and taking account of all waivers, exemptions or variations from time to time applicable (in particular situations or generally) to AIAL, DAE, HoldCo or MergeCo, as the case may be.

"ASX" means Australian Securities Exchange Limited or, as the context requires, the financial market operated by it.

"Board of AIAL" means the board of directors of AIAL (or a duly appointed committee of the board).

"Board of DAE" means the board of directors of DAE (or a duly appointed committee of the board).

"Board of HoldCo" means the board of directors of HoldCo (or a duly appointed committee of the board).

"Board of MergeCo" means the board of directors of MergeCo (or a duly appointed committee of the board).

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which registered banks are open for business in Auckland.

"Cash Amount" means, in respect of each AIAL Share, \$2.34, subject to clause 4.2.

"Cash Pool" means an amount between \$309,761,500 and \$312,750,000.

"Code" means the New Zealand Takeovers Code in force from time to time.

"Communications" has the meaning given in clause 2.2(d).

"Competing Proposal" means in relation to AIAL:

- (a) any offer or proposal in relation to a takeover bid, scheme of arrangement, capital reconstruction, buy-back, merger, amalgamation, consolidation or other business combination involving AIAL or its Subsidiary;
- (b) any proposal which could result in a person who does not already have 20% or more of the ordinary shares of AIAL holding or controlling with or without associates (as defined in the Code) more than 20% of the voting rights (as defined in the Code) of AIAL;
- (c) any proposal which could result in a person acquiring a material part of the assets of AIAL,

other than the Transaction.

"Conditions" means the conditions referred to in clause 2.1.

"Consultation Committee" has the meaning given in clause 7.3(b)(i).

"Co-operation Agreement" means the co-operation agreement in the form set out in Schedule 3 to be entered into by DAE and HoldCo in accordance with clause 7.10.

"DAE Group" means DAE and its Subsidiaries and **"member of the DAE Group"** means any one such entity.

"DAE Prescribed Occurrence" means the occurrence of any of the following:

- (a) an Insolvency Event occurring in relation to DAE;
- (b) any fact, matter, event or circumstance that will prevent DAE from meeting its obligations under this agreement in any material respect; or
- (c) MergeCo or HoldCo carrying on any business or incurring any liabilities other than as necessary in relation to the Transaction.

"Dividend Policy" means the dividend policy for HoldCo as agreed between the parties, and initialled for the purposes of identification, on or prior to the date of this agreement.

"Effective" means the coming into effect of the Amalgamation for the purposes of the Act.

"Effective Date" means the date on which the Amalgamation becomes Effective.

"Governmental Agency" means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, including the Civil Aviation Authority of New Zealand, Takeovers Panel, Commerce Commission, ASX, NZX, OIO and the Inland Revenue Department.

"HoldCo" means a company incorporated under the Act as a wholly-owned Subsidiary of DAE.

"HoldCo Loan Note" means a loan note issued by HoldCo, the principal terms of which have been agreed between the parties, and initialled for the purposes of identification, on or prior to the date of this agreement.

"HoldCo Ordinary Share" means an ordinary share in the capital of HoldCo having the rights set out in the New Constitution.

"Implementation Committee" means a committee made up of:

- (a) Mike Smith, Robert Sinclair and Charles Spillane and Kjeld Binger, Hamish de Run and Mark Craig;
- (b) representatives from the legal and financial advisers of each party; and
- (c) such other persons as the parties may agree from time to time.

"Independent Person" has the meaning given in clause 7.1(c).

"Independent Report" means the report in relation to the Amalgamation prepared by the Independent Person.

"Insolvency Event" means in relation to a person:

- (a) the appointment of a liquidator, interim liquidator, administrator, receiver, receiver and manager or other insolvency official to the person or to the whole or a substantial part of the property or assets of the person;

- (b) the entry by the person into a compromise or arrangement with its creditors generally or any group of creditors;
- (c) the calling of a meeting to consider a resolution to liquidate the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the liquidation or dissolution of the person other than where the application or order (as the case may be) is set aside within 14 days;
- (d) the person suspends or threatens to suspend payment of its debts generally;
- (e) the person ceases or threatens to cease to carry on business;
- (f) the person is or becomes unable to pay its debts when they fall due; or
- (g) the appointment of a statutory manager under the Corporations (Investigation and Management) Act 1989.

"Investment Statement" means the investment statement in respect of the Stapled Securities prepared in accordance with the Securities Act.

"Listing Rules" means the listing rules of ASX and NZSX, as the case requires.

"MergeCo" means a company incorporated under the Act as a wholly-owned Subsidiary of HoldCo.

"New Constitution" means the constitution to be adopted by HoldCo in the form set out in Schedule 2 (as amended, if at all, in order to comply with any requirements of NZX or ASX).

"Notice of Meeting" means the notice of meeting to be circulated to AIAL Shareholders in respect of the Shareholders' Meeting, which includes a letter from the chairman of the Board of AIAL and any material that is required by any Applicable Regulations to be circulated to AIAL Shareholders in connection with the Transaction and which is not included in any of the other Shareholder Documentation.

"NZSX" means the New Zealand stock market operated by NZX.

"NZX" means New Zealand Exchange Limited, or any successor exchange.

"Offer Document" means the combined Investment Statement and the Prospectus.

"OIO" means the Overseas Investment Office.

"Participant" means each person who is an AIAL Shareholder on the Record Date.

"Prescribed Occurrence" means (other than as required or contemplated by, or as a consequence of, this Agreement or the Transaction) the occurrence of any of the following:

- (a) AIAL converting all or any of its shares into a larger or smaller number of shares;
- (b) AIAL resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares, or agreeing or offering to do any of the foregoing;

- (c) AIAL determining, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders other than as contemplated by clause 10;
- (d) AIAL or its Subsidiary issuing shares, or granting an option over its shares, or resolving or agreeing to make such an issue or grant such an option, excluding any issue of up to 3,907,200 AIAL Shares pursuant to AIAL's executive and employee share option plans in existence at the date of this agreement and which have previously been disclosed to DAE;
- (e) AIAL or its Subsidiary issuing, or resolving or agreeing to issue, equity securities or other instruments convertible into shares or debt securities, other than the issue of commercial paper under AIAL's existing commercial paper programme;
- (f) AIAL making any change or amendment to its constitution unless it is required to do so to comply with the Listing Rules or the terms of any of its securities being amended;
- (g) AIAL or its Subsidiary disposing, or agreeing to dispose of, the whole or, a substantial part, of its business or property;
- (h) AIAL or its Subsidiary:
 - (i) acquiring or disposing of;
 - (ii) agreeing to acquire or dispose of; or
 - (iii) offering, proposing, announcing a bid or tendering for, any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds \$50,000,000 unless already disclosed in writing by AIAL to DAE before the date of this agreement;
- (i) AIAL or its Subsidiary:
 - (i) making a new, renewing, or varying any, material contractual or other commitment (including any undertaking to a Government Agency), or waiving any material contractual right; or
 - (ii) exercising a contractual right or other option to renew or extend an existing material agreement (including under any lease), that is not in the ordinary course of business unless it was disclosed in writing by AIAL to DAE before the date of this agreement;
- (j) AIAL or its Subsidiary creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property unless as a replacement or variation to existing secured funding facilities;
- (k) an Insolvency Event occurring in relation to AIAL or its Subsidiary;
- (l) AIAL or its Subsidiary changing any significant accounting practice or policy applied by them to report their financial position or performance, other than:

- (i) to comply with generally accepted New Zealand accounting standards and any domestically accepted international accounting standards (including a change to an IFRS standard); and/or
 - (ii) as disclosed in writing to DAE prior to the date of this agreement;
- (m) AIAL changing, or agreeing to change (including accelerating any benefit payable), in any material respect, the remuneration or any other material terms of employment of any director, officer or executive (except for ordinary wage or salary increases in accordance with its established review policy) or entering into any collective agreement with employees other than:
 - (i) in the ordinary course of business;
 - (ii) as disclosed in writing to DAE prior to the date of this agreement; or
 - (iii) as contemplated by clause 6 of this agreement;
- (n) the occurrence of any material adverse change in the financial position, trading operations or prospects or assets of AIAL and its Subsidiary as compared with the position as at the date of this agreement, and no event occurring which gives or may give rise to such a material adverse change (except in either case to the extent fairly disclosed in writing to DAE or to NZX prior to the date of this agreement), provided that, for the avoidance of doubt, any downgrade to the credit rating of AIAL or its Subsidiary by any ratings agency after the date of this agreement shall not constitute a material adverse change for the purposes of this paragraph (n);
- (o) proceedings, other than any which have been publicly disclosed by AIAL prior to the date of this agreement, being notified, threatened or commenced against AIAL or its Subsidiary, involving a claim or claims together totalling in excess of \$50,000,000;
- (p) AIAL resolving to propose or proposing an amalgamation (other than the Amalgamation); or
- (q) AIAL breaching clause 7.3(a) in any material respect.

"Prospectus" means the prospectus to be registered in respect of the Stapled Securities prepared in accordance with the Securities Act.

"Record Date" means 5.00 pm on the Business Day three Business Days prior to the Effective Date, or such other date as the parties agree.

"Registrar" means the Registrar of Companies appointed in accordance with the Act.

"Regulatory Approvals" means:

- (a) the approval of the OIO to the Transaction;
- (b) such approvals of NZX and ASX as are required by their respective Listing Rules to the form of the Shareholder Documentation;
- (c) the approval of the Registrar to the Prospectus;
- (d) a waiver from NZX from Listing Rule 9.3.1 to permit Related Parties (as defined in the NZSX Listing Rules) to vote at the Shareholders' Meeting on any

ordinary resolution required by NZSX Listing Rule 9.2 in relation to the Amalgamation;

- (e) such other consents, rulings, approvals, waivers or exemptions as may be necessary under the laws of New Zealand or Australia or the Listing Rules of NZSX or ASX to give effect to the Transaction; and
- (f) any other approval which the parties agree is necessary to implement the Transaction.

"Securities Act" means the Securities Act 1978 and, except where inconsistent with the context, includes the Securities Regulations 1983.

"Shareholder Documentation" means:

- (a) the Amalgamation Proposal;
- (b) the information to be sent to AIAL Shareholders in accordance with section 221(3) of the Act in relation to the Amalgamation;
- (c) the Notice of Meeting and proxy form; and
- (d) the Offer Document.

"Shareholders' Meeting" means the meeting of AIAL Shareholders to be convened to approve the Amalgamation.

"Share Registrar" means Computershare Investor Services Limited.

"Specified Percentage" means 51% on a fully diluted basis (assuming all options to acquire AIAL shares existing as at the date of this agreement that are capable of exercise prior to the Effective Date are exercised prior to the Effective Date).

"Standstill Deed" means the standstill deed in the form set out in Schedule 4 to be entered into by DAE and HoldCo in accordance with clause 7.11.

"Stapled Security" means a HoldCo Ordinary Share and a HoldCo Loan Note which will be quoted on ASX and NZSX as a single class of security and which will not be able to be traded separately.

"Subsidiary" has the same meaning as in section 5(1) of the Act.

"Takeover Notice" means a notice referred to in rule 41 of the Code.

"Timetable" means the timetable for implementation of the Transaction as set out in Schedule 1.

"Transaction" means:

- (a) the Amalgamation; and
 - (b) the issue of Stapled Securities to DAE in accordance with clause 5,
- in accordance with the terms of this agreement.

1.2 **Interpretation:** In this agreement, unless the context otherwise requires:

- (a) words importing one gender include the other gender;

- (b) the singular includes the plural and vice versa;
- (c) references to a month or a year are references to a calendar month or year, as the case may be;
- (d) references to dates and times are to dates and times in New Zealand; and
- (e) references to currency are to New Zealand currency.

1.3 **Further interpretation:** In this agreement:

- (a) a reference to a party is a reference also to that party's administrators or successors and permitted assigns;
- (b) a reference to a "**person**" includes an individual, firm, company, corporation or unincorporated body of persons, or any Governmental Agency, in each case whether or not having separate legal personality, and a reference to a "**company**" includes a person;
- (c) a reference to "**include**" means include without limitation and "**includes**" and "**including**" are to be construed accordingly;
- (d) headings are for convenience only and shall not affect interpretation;
- (e) references to sections, clauses and schedules are references to sections, clauses and schedules of this agreement unless specifically stated otherwise; and
- (f) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

1.4 **Business Day:** Except where otherwise expressly provided, where under this agreement the day on or by which any act, matter or thing is to be done is not a Business Day, that act, matter or thing must be done on or by the immediately succeeding Business Day.

1.5 **References to Knowledge:** In this agreement, references to the knowledge or awareness of AIAL (however expressed) as at any time are references to the actual knowledge as at that time of the following people, and shall not include any facts or circumstances of which any person has constructive knowledge only:

- (a) John Maasland, Anthony Frankham, Mike Smith, Joan Withers and Keith Turner; and
- (b) Don Huse, Robert Sinclair, Charles Spillane, Tony Gollin, Stephen Reindler, Nicholas Forbes, Chris Gudgeon, Judy Nicholl, Tony Wickstead, Simon Robertson and Adrienne Darling.

2. CONDITIONS

2.1 **Conditions:** The finalisation of the Transaction is subject to the following conditions being satisfied or waived:

- (a) AIAL Shareholders approving the Amalgamation at the Shareholders' Meeting by a special resolution in accordance with the Act and an ordinary resolution in accordance with the NZSX Listing Rules (to the extent NZSX Listing Rule 9.2

applies to the Amalgamation and no waiver from the obligation to comply with such Listing Rule has been granted by NZX);

- (b) the Amalgamation becoming Effective;
- (c) all Regulatory Approvals having been obtained, and not having been withdrawn or ceasing to be applicable (whether by reason of a change of law or practice, a change in circumstances or otherwise), in form and substance reasonably satisfactory to the Board of AIAL and the Board of DAE;
- (d) the Stapled Securities to be issued to DAE and to former AIAL Shareholders having been approved for listing and quotation on ASX and NZSX (subject only to the issue of such Stapled Securities in accordance with this agreement and the Amalgamation);
- (e) not more than two Business Days prior to the Effective Date, Standard & Poor's issuing to HoldCo, on the basis that the Amalgamation is Effective, a confirmation (in usual form) that HoldCo's long term senior unsecured credit rating will be not less than BBB- (stable outlook);
- (f) AIAL having in place committed facilities available to HoldCo and MergeCo in respect of funding of not less than \$2,020,000,000 which are consistent with the facilities which are set out in the term sheet signed by AIAL on the date of this agreement, in form and substance reasonably satisfactory to the Board of AIAL and the Board of DAE;
- (g) DAE having in place committed funding to enable it to meet its obligations under this agreement and the Amalgamation;
- (h) no Prescribed Occurrence having occurred prior to the Effective Date;
- (i) no DAE Prescribed Occurrence having occurred prior to the Effective Date;
- (j) the authority of AIAL to operate and manage the international and domestic airport known as Auckland International Airport at Mangere, Auckland not having been amended or revoked prior to the Amalgamation becoming Effective such that AIAL is no longer able to operate the Airport on substantially the same terms and conditions applying on the date of this agreement;
- (k) the Independent Person having delivered the Independent Report, which report expresses a favourable opinion on the transaction;
- (l) this agreement not having been terminated by either party pursuant to clause 9.1 or 9.2 prior to the satisfaction of all the conditions referred to in clauses 2.1(a) to 2.1(k).

2.2 Satisfaction of conditions

- (a) AIAL and DAE must each use their respective best endeavours to satisfy, or procure the satisfaction of, the Conditions as soon as practicable after the date of this agreement or procure that there is no occurrence within a party's control that would prevent the Conditions being satisfied (as the context requires).
- (b) Unless otherwise specified in clause 2.1, the latest time or date for satisfaction of the Conditions referred to in clauses 2.1(a), (c) (other than in respect of the obtaining of consent of the OIO), (d) (f), (g) and (k) is 31 December 2007, and in respect of the obtaining of consent of the OIO, and in respect of the Condition in 2.1(b), is 31 March 2008.

- (c) AIAL and DAE each agrees that its obligation to use best endeavours to satisfy, or procure satisfaction of, the Conditions includes:
- (i) to the extent permitted by Applicable Regulations, cooperating with one another or a Governmental Agency or third party in good faith with a view to satisfying the Conditions, including providing all information reasonably required by the other party in relation to the AIAL Group or DAE Group and their respective shareholders (as appropriate) in order to satisfy the Conditions and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate; and
 - (ii) regularly updating the other on the progress of obtaining approvals, consents, modifications or waivers and promptly informing the other of the satisfaction of any Condition as appropriate and as permitted by Applicable Regulations.
- (d) Each party must consult with the other, to the extent reasonably practicable in advance, in relation to all communications (whether written or oral, and whether direct or via agents, consultants and advisers) with any Governmental Agency, rating agency or any other third party who is required to be consulted, in relation to implementation of the transactions contemplated by this agreement ("**Communications**") including providing copies to the other party of any written Communications sent to or received from a Governmental Agency, rating agency or other third party promptly upon dispatch or receipt (as the case may be).
- (e) A Condition may only be waived by agreement in writing by both parties except for:
- (i) the Condition in clause 2.1(h), which may only be waived by DAE; and
 - (ii) the Condition in clause 2.1(i), which may only be waived by AIAL.
- (f) Each party must promptly give notice to the other upon satisfaction or waiver of each of the Conditions.

2.3 Consultation on failure of Condition

- (a) If any event occurs which would prevent any of the Conditions being satisfied, or there is an occurrence that is reasonably likely to prevent any Condition being satisfied by the relevant date specified in clause 2.1 or 2.2 (as the case may be), the parties must consult in good faith to:
- (i) determine whether the Transaction may proceed by way of alternative means or methods; or
 - (ii) extend the relevant date.
- (b) If the parties are unable to reach agreement under clause 2.3(a) within five Business Days of becoming aware of the relevant event or occurrence, then if the event or occurrence will prevent the Condition from being satisfied, unless that Condition is waived by both AIAL and DAE, or by DAE in the case of the condition in clause 2.1(h) or by AIAL in the case of the condition in clause 2.1(i), either party may terminate this agreement without any liability to the other party because of that termination, unless the relevant occurrence or the

failure of the Condition to be satisfied arises out of a breach by the terminating party of clause 2.2 or clauses 7, 8,13 or 15.

2.4 **Certain notices:** AIAL and DAE must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:

- (a) a representation or warranty provided in this agreement to be false;
- (b) non-fulfilment of any of the Conditions; or
- (c) a material breach of this agreement.

3. AGREEMENT TO PROCEED WITH THE TRANSACTION

3.1 **Transaction:** The parties agree to undertake the Transaction on the terms of this agreement.

3.2 Timetable

- (a) AIAL and DAE agree to work together in good faith and use all reasonable endeavours to ensure the Timetable is met and to ensure that the Shareholders' Meeting is held as soon as practicable following the date of this agreement.
- (b) The Effective Date shall occur 15 Business Days following fulfilment or waiver (as the case may be) of the Conditions (other than those Conditions for which the date for satisfaction is expressed by reference to the Effective Date) or such other later date as the parties may agree.

3.3 **Structure of Amalgamation:** The Amalgamation will be effected through AIAL amalgamating with MergeCo. AIAL will cease to exist following completion of the Amalgamation.

4. CONSIDERATION

4.1 Consideration

- (a) Subject to clause 4.2, the Amalgamation Proposal will provide that AIAL Shares are not to be converted into shares in MergeCo and that the consideration each Participant is to receive for its AIAL Shares, at the election of each Participant, is:
 - (i) one Stapled Security and the Cash Amount for each AIAL Share; or
 - (ii) the maximum number of Stapled Securities available, determined in accordance with clause 4.1(b), with the balance comprising cash; or
 - (iii) the maximum amount of cash available, determined in accordance with clauses 4.1(b) and (c), with the balance comprising Stapled Securities,

provided that where a Participant does not make an election, such Participant shall be deemed to have elected the alternative in (i).

- (b) For each Participant that elects the alternative in clause 4.1(a)(ii) or (iii), HoldCo shall initially allocate to that Participant Stapled Securities or cash in accordance with their election, provided that, after taking into account the elections or deemed elections of all Participants:
- (i) the aggregate amount of Stapled Securities and cash allocated to Participants shall be limited so that in total neither a greater number of Stapled Securities, nor a greater amount of cash, is required to be provided than would be provided if all Participants elected the alternative in clause 4.1(a)(i) and the holding of DAE is the Specified Percentage; and
 - (ii) if Participants in aggregate elect a greater number of Stapled Securities, or a greater amount of cash, than is available on the basis described in clause 4.1(b)(i), the Stapled Securities or cash (as the case may be) to be provided to Participants who elect the alternative in clause 4.1(a)(ii) or (iii) will (subject to any further allocation made in accordance with clause 4.1(c)) be adjusted on a basis pro rata to their holdings, and the balance will be paid in cash or Stapled Securities, as applicable.
- (c) If, once the initial allocation has been determined in accordance with clause 4.1(b), there are Participants who made the election referred to in clause 4.1(a)(iii) that are still receiving Stapled Securities in accordance with that initial allocation, such Stapled Securities, or a pro rata proportion thereof, as the case may be, shall be allocated to DAE up to the upper limit of the Cash Pool (but provided that in no event shall the holding of DAE following such allocation exceed 60%) and on the basis that each such Stapled Security is allocated on the basis of a value of \$1.39 per Stapled Security and the relevant Participants shall be paid cash for the Stapled Securities so allocated.

4.2 Adjustments: The Amalgamation Proposal will provide that if:

- (a) AIAL declares, pays or makes any dividend or other distribution on, or in respect of, the AIAL Shares on or after the date of this agreement (other than as contemplated by clause 10), and DAE waives the Condition in clause 2.1(h), then, at the option of DAE the aggregate amount of cash which would otherwise have been payable pursuant to clause 4.1 will be reduced by an amount equivalent to the aggregate amount of that dividend or other distribution and the cash consideration payable to Participants pursuant to clause 4.1 shall be adjusted accordingly;
- (b) AIAL makes any bonus issue of fully paid ordinary shares, on or after the date of this agreement, and DAE waives the Condition in clause 2.1(h), then, at the option of DAE, the consideration payable in respect of each AIAL Share pursuant to clause 4.1 will be proportionally reduced to take account of such bonus issue, such that the total aggregate consideration payable in respect of all AIAL Shares under the Amalgamation (including those bonus shares) remains the same as it would have had no such bonus issue taken place;
- (c) AIAL subdivides or consolidates the AIAL Shares on or after the date of this agreement, and DAE waives the Condition in clause 2.1(h), the consideration payable pursuant to clause 4.1 will be correspondingly reduced or increased (as the case may be); and
- (d) AIAL issues any further fully paid ordinary shares on or after the date of this agreement, whether pursuant to any dividend reinvestment plan, share investment scheme or employee share scheme, or otherwise, and DAE waives

the Condition in clause 2.1(h) and clause 4.2(b) does not apply in respect of such shares, the Amalgamation Proposal will extend to and include those shares.

- 4.3 **Issue of Stapled Securities and payment:** DAE covenants in favour of AIAL that HoldCo will as the consideration payable to each Participant in respect of the Amalgamation:
- (a) pay to Participants within two Business Days of the Effective Date, either by electronic payment to a bank account specified by the Participants or by forwarding a cheque to the addresses for Participants specified in AIAL's share register, the amount of cash payable in accordance with clause 4.1 (as adjusted, if at all, in accordance with clause 4.2); and
 - (b) issue to Participants on the Effective Date, the number of Stapled Securities to be issued in accordance with clause 4.1 (as adjusted, if at all, in accordance with clause 4.2), and cause the Share Registrar to enter the names of Participants in the relevant registers of HoldCo as the holders of those Stapled Securities.
- 4.4 **Notification:** Within five Business Days following the Effective Date HoldCo shall cause the Share Registrar to forward (or cause to be forwarded) by mail to each Participant (other than Participants who have not been issued Stapled Securities) at the address for such Participant specified in AIAL's share register a statement confirming their holding of Stapled Securities.
- 4.5 **Resources available:** DAE covenants that it has or will have committed resources available to it to meet its obligations under clause 5.1 and that it will fund its obligations under clause 5.1 from its and/or its Subsidiaries' (other than HoldCo, MergeCo or a Subsidiary of MergeCo or HoldCo) own resources and from external borrowings, without recourse to AIAL or the resources of AIAL.

5. ISSUE OF STAPLED SECURITIES TO DAE

- 5.1 **Issue of Stapled Securities:** Before HoldCo issues to Participants the Stapled Securities referred to in clause 4.3:
- (a) DAE shall cause HoldCo to issue to DAE, and DAE shall subscribe for, a number of Stapled Securities so that after the issue to Participants of the Stapled Securities referred to in clause 4.3, DAE holds between 51% and 60%, and Participants between 49% and 40%, of the Stapled Securities, as determined in accordance with clause 4.1; and
 - (b) DAE shall pay to HoldCo the aggregate of the sum of \$2,331,374,349 and such part of the Cash Pool as may be utilised as a result of any allocation made in accordance with clause 4.1(c) (which sum may be paid on or after the subscription referred to in clause 5.1(a)).
- 5.2 **HoldCo and MergeCo share capital:** DAE shall ensure that, before the issue of the Stapled Securities:
- (a) HoldCo has issued no securities other than 100 redeemable ordinary shares held by DAE; and
 - (b) MergeCo has issued no securities other than 100 ordinary shares held by HoldCo.

- 5.3 **Redemption of shares:** Upon the issue to DAE of Stapled Securities pursuant to clause 5.1, the redeemable ordinary shares referred to in clause 5.2(a) shall be redeemed by HoldCo for a total consideration of \$100.

6. EMPLOYEE SHARE SCHEMES

- 6.1 **Employee Share Schemes:** The parties will cooperate to establish incentive schemes for employees of MergeCo which provide benefits so far as possible the same as those provided by incentive schemes presently in existence for employees of AIAL. If the parties are unable to agree upon the terms of those schemes, the matter or matters in dispute shall be determined in accordance with clause 11.

- 6.2 **Existing option schemes:** Subject to clause 6.3, the parties agree that, in respect of options issued under the existing options schemes (both real and phantom schemes) which on the Effective Date:

- (a) are exercisable by option holders, such holders are entitled to exercise those options prior to the Effective Date in accordance with the terms of those options, and, if an option has not been exercised prior to the Effective Date, such option shall be amended to provide for an option of an equivalent value in respect of the Stapled Securities; or
- (b) are not exercisable by option holders, such options shall be amended to provide for an option of an equivalent value in respect of the Stapled Securities.

- 6.3 **Regulatory approvals:** The arrangements in clause 6.2 shall be subject to the approval of NZX and ASX. If such approvals are not able to be obtained, the parties will agree an alternative approach acceptable to NZX and ASX which ensures that the relevant option holders are left in the same overall economic position as if the Amalgamation had not occurred.

7. IMPLEMENTATION OF THE TRANSACTION

- 7.1 **Initial Steps:** Subject to the terms and conditions of this agreement:

- (a) DAE shall incorporate HoldCo as a wholly-owned Subsidiary and shall procure that HoldCo incorporates MergeCo as a wholly-owned Subsidiary.
- (b) The parties agree to work together to prepare, approve and finalise the Shareholder Documentation and such other documents as may be necessary or desirable to permit the AIAL Shareholders to vote on the Amalgamation.
- (c) AIAL shall promptly arrange for Grant Samuel & Associates Limited ("**Independent Person**") to be appointed and for the Independent Person to promptly prepare the Independent Report.
- (d) As soon as possible after preparation of the final form of the Shareholder Documentation, AIAL, HoldCo and MergeCo shall submit the relevant Shareholder Documentation to NZX, ASX and the Registrar (to the extent required by any Applicable Regulation) for approval and procure that any amendments to the Shareholder Documentation required by any of such persons are made.
- (e) As soon as practicable after the preparation of the final form of the Shareholder Documentation, meetings of the Board of AIAL, the Board of DAE, the Board of

HoldCo and the Board of MergeCo will be convened for the purposes of approving the Shareholder Documentation and passing all necessary resolutions under section 221 of the Act.

- (f) The Notice of Meeting shall include a statement that the Board of AIAL unanimously recommends approval of the Amalgamation Proposal.
- (g) No changes shall be made to the Shareholder Documentation approved pursuant to clause 7.1(e) without the consent of AIAL and DAE, such consent not to be unreasonably withheld or delayed.
- (h) AIAL and DAE shall, subject to any Applicable Regulations, each participate in mutual efforts (including joint meetings), at DAE's expense, to encourage AIAL Shareholders to vote in favour of the Amalgamation Proposal and to otherwise promote the transaction favourably.

7.2 **AIAL's Obligations:** AIAL must take all necessary steps within its control to implement the Transaction in accordance with the Timetable, including each of the following:

- (a) despatch the Shareholder Documentation and the Independent Report to AIAL Shareholders;
- (b) seek all consents and approvals (in a form reasonably acceptable to DAE) required as a consequence of the Transaction under contractual arrangements to which it or its Subsidiary is a party (including, without limitation, seeking a waiver of any rights arising under any joint venture agreement to which AIAL or its Subsidiary is a party whereby the other party to that joint venture may have the right to acquire the interest of AIAL or its Subsidiary in the joint venture);
- (c) ensure that no Prescribed Occurrence occurs and must promptly advise DAE if a Prescribed Occurrence occurs or if AIAL reasonably believes that a Prescribed Occurrence is more likely than not to occur;
- (d) convene the Shareholders' Meeting to approve the Amalgamation;
- (e) undertake all necessary actions within its control to implement the Amalgamation after approval of the Amalgamation by AIAL Shareholders;
- (f) deliver a copy of the Amalgamation Proposal to every secured creditor of AIAL and give public notice of the Amalgamation, each in accordance with section 221(4) of the Act;
- (g) deliver to MergeCo such documents as required to permit MergeCo to deliver to the Registrar the Amalgamation Proposal and the other documents required pursuant to section 223 of the Act.

7.3 **Conduct of AIAL business:**

- (a) From the date of this agreement up to and including the Effective Date AIAL and its Subsidiary must conduct their respective businesses in the ordinary and proper course of business and make all reasonable efforts to:
 - (i) keep available sufficient resources to continue the business operated by the relevant company;
 - (ii) preserve their material relationships with Governmental Agencies, ratings agencies, customers, suppliers, joint venturers and others with

whom they have business dealings which are material to the business operated by the relevant company;

- (iii) preserve intact its current business organisation and maintain its business and assets, in each case in all material respects,

other than as may be required or contemplated by this agreement.

(b)

- (i) Immediately following execution of this agreement, AIAL and DAE shall form a consultation committee consisting of Don Huse, Robert Sinclair and Charles Spillane, and Kjeld Binger, Hamish de Run and Mark Craig or suitable alternates ("**Consultation Committee**"). AIAL and DAE shall ensure that the Consultation Committee shall meet as regularly as reasonably required.
- (ii) The purpose of the Consultation Committee shall be to provide for DAE to be kept informed about, and be consulted on, material matters relating to the business of AIAL and its Subsidiary during the period to the Effective Date, including without limitation:
 - (aa) capital expenditure over \$50 million in respect of a single project or a related series of projects;
 - (bb) project 3B;
 - (cc) implementation of AIAL's re-tendered duty free concession; and
 - (dd) implementation of AIAL's aeronautical pricing, including any changes proposed to the proposed pricing disclosed to DAE prior to the date of this agreement.
- (iii) Nothing in this clause 7.3(b) shall be construed as requiring AIAL to obtain the consent of DAE to any matters considered by the Consultation Committee, or as fettering the discretion of the Board of AIAL to operate AIAL's business.
- (iv) Unless, and to the extent, DAE specifically agrees otherwise in writing, the fact that a matter is brought before the Consultation Committee shall not constitute a waiver or any right or remedy DAE may have under this agreement or under the Co-operation Agreement in relation to that matter.
- (v) The requirement for AIAL to comply with this clause 7.3(b) shall be subject to the requirements of, or any restrictions in, the Listing Rules of ASX and NZSX.

7.4 DAE's obligations

- (a) DAE will, and will procure that HoldCo and MergeCo will, carry out all acts required by Part XIII of the Act within the control of DAE, HoldCo and MergeCo, respectively, in order to ensure that the Amalgamation becomes Effective in accordance with the Timetable (including, without limitation, the passing of all resolutions, the giving of all notices and the filing and registration of all documents, including the Prospectus).

- (b) DAE shall procure that each of HoldCo and MergeCo shall not carry on any business, and shall have no assets or liabilities, before the Effective Date, save as contemplated by this agreement.
- (c) If this agreement or the Amalgamation Proposal provides that an act is to be performed by HoldCo or MergeCo, DAE shall ensure that HoldCo or MergeCo (as the case may be) carries out such act.
- (d) DAE shall ensure that no DAE Prescribed Occurrence occurs and must promptly advise AIAL if a DAE Prescribed Occurrence occurs or if DAE reasonably believes that a DAE Prescribed Occurrence is more likely than not to occur.
- (e) DAE shall ensure that, prior to the Effective Date, the Board of HoldCo adopts the Dividend Policy.

7.5 **Implementation Committee**

- (a) From the date of this agreement until the Effective Date, the Implementation Committee will oversee the implementation of the Transaction for the purposes of ensuring the Transaction is implemented in a timely manner in accordance with this agreement and the Timetable.
- (b) The Implementation Committee will meet regularly from the date of this agreement until the Effective Date.
- (c) The Implementation Committee may delegate certain tasks to specific subcommittees to consider particular matters.
- (d) Decisions of the Implementation Committee shall be made by unanimous agreement of Mike Smith, Robert Sinclair, Charles Spillane, Kjeld Binger, Hamish de Run and Mark Craig or their delegates. For the avoidance of doubt, the Implementation Committee will not assume the obligations and responsibilities of the Board of AIAL.
- (e) AIAL and DAE will procure that their representatives on the Implementation Committee use their best endeavours to ensure compliance with this agreement and the Timetable.

7.6 **Change of name:** With effect from the Effective Date, MergeCo and HoldCo shall change their names to "Auckland International Airport Limited" and "Auckland Airport Limited", respectively, or such other names as the parties may agree.

7.7 **Appointment of Directors:** With effect from the Effective Date, DAE will procure that the board of directors of HoldCo and MergeCo are as follows:

- (a) Kjeld Binger, Hamish de Run and Mark Craig; and
- (b) four of the existing AIAL directors, as determined by AIAL,

and the chairman of the board of directors of HoldCo and MergeCo shall be one of the directors referred to in clause 7.7(b).

7.8 **New Constitution:** DAE shall procure that HoldCo shall adopt the New Constitution before the Effective Date.

- 7.9 **Listing:** DAE shall procure that HoldCo will, prior to the Effective Date, apply for quotation of the Stapled Securities on the official list of each of ASX and NZSX with effect from the Effective Date.
- 7.10 **Co-operation Agreement:** On or immediately after the Amalgamation becoming Effective, DAE and HoldCo shall enter into the Co-operation Agreement.
- 7.11 **Standstill Deed:** On or immediately after the Amalgamation becoming Effective, DAE and HoldCo shall enter into the Standstill Deed.

8. SHAREHOLDER DOCUMENTATION

- 8.1 **Provision of information:** Each of DAE and AIAL shall provide the other in a timely and expeditious manner all such information about DAE and its subsidiaries (including HoldCo and MergeCo), or AIAL and its Subsidiary, as the case may be, and their respective directors, officers and shareholders which is required to be included in the Shareholder Documentation in order to comply with any Applicable Regulations. Each of DAE and AIAL will ensure that such information is provided in good faith and on the understanding that AIAL, HoldCo and/or MergeCo (as the case may be) will rely on that information for the purposes of preparing the Shareholder Documentation.
- 8.2 **Accuracy of information:** Each of DAE and AIAL shall ensure that all information provided by it that is included in the Shareholder Documentation does not contain any material statement which is misleading or contain any material omissions having regard to applicable disclosure requirements imposed by any Applicable Regulations or contain any "false representation" or constitute "misleading and deceptive conduct" as those terms are construed under the Fair Trading Act 1986.
- 8.3 **Inaccuracies or omissions:** If, after the date of the Shareholder Documentation, DAE or AIAL becomes aware of a material inaccuracy in or a material omission from the Shareholder Documentation or of a new circumstance after the date of the Shareholder Documentation that would have been required to have been disclosed by DAE to AIAL, or vice versa, pursuant to clause 8.1 had it arisen before the date of the Shareholder Documentation, DAE or AIAL, as the case may be, will as soon as possible notify the other of that information and DAE and AIAL will as soon as possible endeavour to agree on what action to take.
- 8.4 **Due diligence:** The parties will agree a joint due diligence process for the preparation of the Shareholder Documentation that enables both parties to be satisfied that defences are available to the parties (and HoldCo and MergeCo) and their respective directors to the maximum extent permitted by Applicable Regulations.
- 8.5 **Dispute:** If there is a dispute as to the content of any part of the Shareholder Documentation, the parties must refer the matter to the Implementation Committee for resolution. The Implementation Committee must use its reasonable endeavours to resolve the dispute within two Business Days and if it is not resolved by the Implementation Committee, it shall be resolved under clause 11.
- 8.6 **Reasonable endeavours:** AIAL and DAE each agree that the efficient preparation of the Shareholder Documentation and the Independent Report and the implementation of the Amalgamation is in the interests of AIAL and DAE shareholders and that they will use all reasonable resources (including management resources and the resources of external advisers) to produce the Shareholder Documentation and the Independent Report and implement the Amalgamation in accordance with the Timetable.

9. TERMINATION

9.1 **Right to terminate:** Either party may terminate this agreement by written notice to the other party at any time before 5.00 pm on the day before the Effective Date if:

- (a) the other party is in material breach of any provision of this agreement, the party wishing to terminate has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate, and the relevant circumstances continue to exist five Business Days (or any shorter period ending at the 5.00 pm on the Business Day before the Effective Date) from the time the notice is given; or
- (b) any court or Government Agency has taken any action permanently restraining or otherwise permanently prohibiting the Transaction, and the action or refusal has become final and cannot be appealed or the Board of AIAL and the Board of DAE have agreed, each acting reasonably, that they do not require an appeal to be pursued or a review of the decision to be sought.

9.2 **AIAL Termination:**

- (a) AIAL may terminate this agreement by written notice to DAE at any time before AIAL Shareholders approve the Amalgamation if, without breaching section 15, AIAL receives a Competing Proposal, and in the reasonable opinion of the Board of AIAL, formed after consultation with DAE and subject to clause 9.2(b) having been complied with, that Competing Proposal will provide a better outcome for AIAL Shareholders than the Transaction, and has a reasonable chance of being successful. For the purposes of this clause 9.2, the reference to consult shall not require AIAL to disclose the terms of any Competing Proposal or the identity of the person or persons making such Competing Proposal.
- (b) AIAL agrees that it may not exercise its right of termination pursuant to clause 9.2(a) unless it has first given DAE 3 working days (being working days in both Auckland and Dubai) to vary the terms of the Amalgamation Proposal and has considered any variation put forward by DAE in good faith and remains of the view that 9.2(a) continues to apply.

9.3 **Effect of termination:** If this agreement is terminated by either AIAL or DAE under clause 2 or clauses 9.1(b) or 9.2, except to the extent that the termination results from a breach by either party of its obligations under this agreement, this agreement will become void and have no effect, without any liability or obligation on the part of AIAL or DAE, other than the provisions of clauses 1, 12, 13 and 16, which will remain in force after termination.

10. DIVIDEND PAYMENTS

10.1 **Final Dividend:** Subject to clause 10.3, prior to the Effective Date, AIAL may, in accordance with its normal procedures and subject to Applicable Regulations pay a final dividend for the year ending 30 June 2007 of up to 7 cents per AIAL Share together with a supplementary dividend to non-New Zealand resident shareholders under the foreign investor tax credit regime.

10.2 **Dividend Payments:** Subject to clause 10.3, the dividend payable by AIAL referred to in clause 10.1 shall be fully imputed except that if insufficient credits are available (taking into account the requirements of clause 10.3), it shall be imputed to the extent possible from available imputation credits for the period prior to this agreement becoming unconditional.

10.3 **Imputation credit account:** AIAL shall ensure that its imputation credit account shall, on the Effective Date:

- (a) contain a sufficient level of credits to allow for any refund of income tax which may be due in respect of any period before the Effective Date; or
- (b) if there is no such refund due, not have a debit balance.

11. RESOLUTION OF DISPUTES

11.1 **Appointment of Expert:** If AIAL and DAE are unable to agree upon:

- (a) the contents of any document required to be prepared for the purposes of the Transaction; or
- (b) any step to be taken in the course of implementing the Transaction,

either AIAL or DAE may by notice to the other require the matter in dispute to be referred for determination to a single expert ("**Expert**"). The Expert shall be an appropriately qualified independent person (who may be a lawyer, chartered accountant, or investment banker) agreed upon between AIAL and DAE, or failing agreement within two Business Days of either requesting the appointment of an Expert, appointed by the president of the Arbitrators' and Mediators' Institute of New Zealand (or any successor body).

11.2 **Decision final:** The decision of the Expert as to the matter in dispute shall be final and binding on the parties. The Expert shall be directed to reach a decision within five Business Days of the matter being referred to the Expert. In reaching a decision, the Expert shall have regard to:

- (a) the submissions of the parties;
- (b) the provisions of this agreement;
- (c) the requirements of Applicable Regulations;
- (d) generally accepted commercial practice;
- (e) what in the view of the Expert would be agreed between two parties with equal bargaining power negotiating at arm's length; and
- (f) such other matters as the Expert considers relevant.

11.3 **Costs and expenses:** Referral of a dispute to the Expert shall not be a submission to arbitration for the purposes of the arbitration statutes of New Zealand. The parties shall bear an equal share of the costs and expenses of the Expert.

12. EXISTING CONFIDENTIALITY DEED AND ANNOUNCEMENT

12.1 **Confidentiality:** The parties confirm that nothing in this Agreement is intended to affect the terms of the existing confidentiality deed dated 23 May 2007 between AIAL and DAE.

12.2 **Joint announcement:** On execution of this agreement, the parties shall make a joint announcement in the form set out in Schedule 5.

12.3 **Other announcements:** Except as may be required by any Applicable Regulation, no party may make any announcement or disclosure as to the subject matter or any of the terms of this agreement except in such form and manner, and at such time, as the parties agree in writing. If a party is required to make any announcement or disclosure as to the subject matter or any of the terms of this agreement by any Applicable Regulation, that party shall first give notice of the requirement to the other party, shall consult with the other party and shall endeavour to agree with the other party on the form of disclosure or announcement to be made. DAE acknowledges that there may be circumstances when AIAL needs to respond urgently to a stock exchange enquiry or respond urgently to a market rumour. Accordingly, notwithstanding the foregoing, in any such case, AIAL may respond to the extent necessary to meet its obligations to that exchange or to address the market rumour, and in so doing, will only disclose non-public information relating or referring to the transactions contemplated by this agreement to the extent it reasonably considers necessary and will notify DAE of that response as soon as reasonably practicable after such disclosure or, where reasonably practicable, in advance of such disclosure. AIAL acknowledges that DAE or its related entities may need from time to time to provide information to the Committee for Foreign Investment in the United States. Accordingly, notwithstanding the foregoing, DAE and its related entities may with the prior written consent of AIAL (such consent not to be unreasonably withheld or delayed) disclose information to the extent necessary to meet their obligations in respect of the Committee for Foreign Investment in the United States, and in so doing, will only disclose non-public information relating or referring to the transactions contemplated by this agreement on a confidential basis and only to the extent it reasonably considers necessary.

12.4 **Implementation of public relations strategies:** Nothing in clause 12.3 shall prevent a party from taking any action that is consistent with its public relations strategy in respect of the Transaction provided that such public relations strategy has been agreed with the other party.

13. WARRANTIES

13.1 **AIAL Warranties:** AIAL represents and warrants to DAE that:

- (a) it has full power and authority to enter into and, subject to satisfaction of the Conditions, perform its obligations under this agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and, subject to satisfaction of the Conditions, performance of this agreement in accordance with its terms;
- (c) this agreement constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity;
- (d) it has not provided any material information to DAE which AIAL knows is materially inaccurate and it has not knowingly omitted any information which might reasonably be expected to affect DAE's willingness to enter into the Transaction on terms materially the same as the terms of this agreement which has not been publicly disclosed through NZX. No representation or warranty is given regarding projections, forecasts or other forward-looking information;
- (e) it has on issue:
 - (i) 1,221,690,439 AIAL Shares;

- (ii) 3,907,200 options to acquire AIAL Shares,

and it has not issued or agreed to issue any other AIAL Shares or securities or instruments which are still outstanding and which may convert into AIAL Shares.

13.2 **DAE Warranties:** DAE represents and warrants to AIAL that:

- (a) it has full power and authority to enter into and, subject to satisfaction of the Conditions, perform its obligations under this agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and, subject to satisfaction of the Conditions, performance of this agreement in accordance with its terms;
- (c) this agreement constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity;
- (d) HoldCo and MergeCo will, since their respective dates of incorporation, not have carried on any business, nor have any assets or liabilities other than as necessary in relation to the Transaction.

13.3 **Application of warranties**

- (a) The warranties in clauses 13.1 and 13.2 apply at the date of this agreement and are repeated each day up to the Effective Date other than the warranties in clauses 13.1(d) and (e) which apply only as at the date of this agreement.
- (b) Each warranty in this clause 13 is to be construed independently and (except where this agreement provides otherwise) is not limited by a provision of this agreement or another such warranty.
- (c) Neither AIAL nor DAE shall have any claim against the other for breach of warranty after the Effective Date.

14. DUE DILIGENCE

14.1 **Own Investigations:** Each party acknowledges and confirms that:

- (a) it has conducted its own investigations in relation to the Transaction and that it has entered into this agreement and will perform its obligations under this agreement solely in reliance upon its own investigations and not in reliance on any information provided by the other party prior to the date hereof other than as specifically warranted in this agreement; and
- (b) in entering into and performing its obligations under this agreement, it has not relied, and will not rely, on any representation, warranty, promise or statement made by the other party or any person on behalf of the other party except as specifically warranted in this agreement.

15. NON-SOLICITATION

15.1 **Non-Solicitation:** AIAL must not, and must not authorise or permit any of its directors, employees, officers, advisers or representatives to actively solicit or initiate Competing Proposals.

15.2 Exceptions

- (a) Nothing in clause 15.1 shall in any way restrict AIAL or any of its directors, employees, officers, advisers or representatives from continuing discussions and/or otherwise progressing any Competing Proposal with a person or persons if discussions with such person or persons had commenced before the date of this agreement.
- (b) The restrictions in clause 15.1 shall cease to apply if, after the date of this agreement, AIAL receives a Takeover Notice or the Board of AIAL reasonably believes that AIAL may receive a Takeover Notice, otherwise than as a result of AIAL breaching clause 15.1.
- (c) Nothing in clause 15.1 shall require AIAL or any of its directors, employees, officers to do, nor restrict such persons from doing, anything which would involve a breach of the fiduciary duties owed by any director of AIAL or would otherwise be unlawful.

16. COST RECOVERY

16.1 Recovery of costs by DAE

- (a) Subject to clause 16.1(b), if at any time after execution of this agreement:
 - (i) any director of AIAL makes a public statement withdrawing or qualifying their support or recommendation of the Transaction (other than in circumstances where AIAL terminates this agreement under clause 9.1 or statements of the nature contained in the joint announcement in the form set out in Schedule 5) or publicly supports a Competing Proposal and the Condition in clause 2.1(a) is not satisfied and the Transaction does not proceed;
 - (ii) this agreement is terminated by DAE because a Prescribed Occurrence occurs which is within the control of AIAL and is not consented to by DAE; or
 - (iii) this agreement is terminated by DAE under clause 9.1(a) or by AIAL under clause 9.2,

AIAL shall pay to DAE upon demand an amount equivalent to all reasonable third party out-of-pocket costs incurred by DAE and its related entities in relation to the Transaction (including legal, accounting, debt commitment fees for the facilities made available to the DAE Group and investment banking fees, travel and accommodation). The amount payable under this clause 16.1(a) shall not exceed \$4,000,000 (exclusive of any New Zealand goods and services tax, which shall also be payable by AIAL) and, for the avoidance of doubt, shall not include any success, announcement or similar fees. AIAL shall not be required to pay any amount under this clause 16.1(a) unless DAE has produced to AIAL a copy of the relevant third party invoice.

- (b) AIAL does not have to pay the amount described in clause 16.1(a) if this agreement has, prior to an event in clause 16.1(a) occurring, been terminated (or the right to terminate exists):
 - (i) by AIAL pursuant to clause 9.1(a); or
 - (ii) by either party pursuant to clause 9.1(b).

16.2 Recovery of costs by AIAL

- (a) Subject to clause 16.2(b), if at any time after execution of this agreement:
- (i) this agreement is terminated by AIAL because a DAE Prescribed Occurrence occurs which is within the control of DAE and is not consented to by AIAL; or
 - (ii) this agreement is terminated by AIAL under clause 9.1(a),
- DAE shall pay to AIAL upon demand an amount equivalent to any commitment fees, arranging fees and underwriting fees paid by AIAL to the relevant lenders in respect of the facilities referred to in clause 2.1(f). The amount payable by DAE under this clause 16.2(b) shall not exceed \$4,000,000.
- (b) DAE does not have to pay the amount described in clause 16.2(a) if this agreement has, prior to an event in clause 16.2(a) occurring, been terminated (or the right to terminate exists):
- (i) by DAE pursuant to clause 9.1(a); or
 - (ii) by either party pursuant to clause 9.1(b).

17. NOTICES

- 17.1 **Form of notice:** If any party wishes to give to another party any notice, claim, demand or other communication ("**Notice**") under or in connection with this agreement, the Notice is to be in writing, made by facsimile, personal delivery or post to the addressee at the facsimile number or address set out below, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial facsimile number, address and relevant person or office holder of each party is:

AIAL:	Auckland International Airport Limited Jean Batten International Terminal Auckland International Airport Auckland NEW ZEALAND
	Attention: Charles Spillane Corporate Secretary
	Facsimile: +64 9 275 4927
DAE:	Dubai Aerospace Enterprise (DAE) Ltd Level 3, Building 4 The Gate Precinct Dubai International Finance Centre Dubai PO Box 506592 UNITED ARAB EMIRATES
	Attention: Mark Craig General Counsel
	Facsimile: +971 4 425 0384

- 17.2 **When notice effective:** No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
- (a) in the case of a facsimile, on the Business Day on which it was despatched or, if despatched after 5.00 pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day (in the place of receipt) after the date of despatch provided in each case that there is produced a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient;
 - (b) in the case of personal delivery, when delivered; and
 - (c) in the case of a letter, on the third Business Day after posting if posted in New Zealand, or on the fifth Business Day if posted to or from a place outside New Zealand.

18. GENERAL

- 18.1 **No Waiver:** No waiver of any breach, or failure to enforce any provision of this agreement at any time by a party in any way affects, limits or waives the right of such party thereafter to enforce and compel strict compliance with the provisions of this agreement.
- 18.2 **Costs:** Except as otherwise expressly provided in this agreement, each party shall bear its own fees, costs and expenses (including legal, investment banking and other professional fees, costs and expenses) incurred in connection with the negotiation preparation and implementation of this agreement. Following the Effective Date, HoldCo will reimburse DAE's costs in relation to the Transaction, up to a maximum of \$15,000,000. No other fees, costs or expenses shall be allocated to or payable by HoldCo except as agreed between the parties before the date of this agreement.
- 18.3 **Counterparts:** This agreement may be signed in two or more counterparts including facsimile or email copies), all of which taken together shall constitute one and the same instrument and a binding and enforceable agreement between the parties.
- 18.4 **Entire Agreement:** This agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding and arrangement relating to that subject matter whether written or oral.
- 18.5 **Amendments:** No amendment or variation to this agreement will be effective unless it is in writing and signed by the parties.
- 18.6 **Further assurances:** Each party shall promptly do everything reasonably required to give effect to this agreement according to its spirit and intent.
- 18.7 **No assignment:**
- (a) Except as provided in clause 18.7(b), neither party shall transfer or assign its interest in, or any of its rights and obligations under, this agreement.
 - (b) DAE may assign the benefit of this agreement to a wholly owned Subsidiary upon the basis that such Subsidiary is entitled to enforce this agreement against AIAL, and shall perform all of DAE's obligations under this agreement (other than clauses 7.10 and 7.11) as if named in this agreement as DAE. Performance of DAE's obligations by the Subsidiary shall be deemed to

constitute performance by DAE but DAE shall not be relieved from liability to perform any of its obligations to the extent that Subsidiary does not perform them.

- (c) If DAE assigns the benefit of this agreement pursuant to clause 18.7(b), all references in this agreement (other than in clause 7.10 and 7.11) to DAE shall, unless the context otherwise requires, be deemed to include the relevant Subsidiary.

18.8 **Severance:** If any provision of this agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.

18.9 **Governing law:** This agreement is governed by, and construed in accordance with, the laws of New Zealand (without giving effect to the principles of conflicts of law) and the parties submit to the exclusive jurisdiction of the Courts of New Zealand in respect of all matters arising out of this agreement, and waive any right they may have to object to an action being brought in those courts, to claim that an action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.

18.10 **Process Agent:** Any notice of any proceeding, judgment or other process in connection with any proceeding or other process in New Zealand under or in connection with this agreement, shall be correctly served if addressed to DAE and given as provided in clause 17.1 to DAE's irrevocably appointed process agent at the following address for service in New Zealand:

Address: c/- Mayne Wetherell
Level 23, IAG House
151 Queen Street
Auckland
NEW ZEALAND

Facsimile: +64 9 921 6001

Contact person/position: Michael Harrod
Partner

If such process agent at any time ceases to be able to or willing to act as the process agent for DAE, DAE shall forthwith irrevocably appoint a replacement process agent who shall be in the same city as the original process agent and shall provide AIAL with the replacement process agent's copy written acceptance of appointment, full address, facsimile number and name and position of the contact person.

SIGNATURES

**AUCKLAND INTERNATIONAL
AIRPORT LIMITED** by:

Signature of director

Signature of director/authorised signatory

Name of director

Name of director/authorised signatory

Witness to authorised signatory

Name:

Address:

Occupation:

**DUBAI AEROSPACE ENTERPRISE
(DAE) LTD** by:

Signature of Authorised Signatory

Signature of Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

SCHEDULE 1**Timetable**

Item	Date
Announce Transaction	23 July 2007
Filing relevant applications with the OIO, Securities Commission, NZX, ASX and ASIC	27 July 2007
Announcement of AIAL Annual Results	23 August 2007
Finalise Shareholder Documentation	7 September 2007
Notice of Meeting sent to NZX and ASX for approval Prospectus sent to Companies Office for approval	7 September 2007
Response from Companies Office, NZX and ASX	21 September 2007
Registration of Prospectus	28 September 2007
Shareholder Documentation mailed to Shareholders	5 October 2007
Copy of Amalgamation Proposal sent to secured creditors and public notice of Amalgamation Proposal given	5 October 2007
Shareholders' Meeting	Week commencing 12 November 2007
Registration of Amalgamation Proposal	Immediately following satisfaction of all conditions

SCHEDULE 2
New Constitution

SCHEDULE 2

**CONSTITUTION
OF
[HOLDCO] LIMITED**

RUSSELL McVEAGH

Certificate

I certify that this document was adopted as the Constitution of the Company by Special Resolution on [●]

Director

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CONSTITUTION
OF
[HOLDCO] LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993.

"**Alternate Director**" means a person appointed by a Director as his or her alternate under section 28.

"**Amalgamation**" means the amalgamation under Part XIII of the Act between [MergeCo] and Auckland International Airport Limited pursuant to which [MergeCo] is to be the continuing company.

"**Appendix 6**" means Appendix 6 of the Listing Rules (as that Appendix may be amended from time to time) or any portion or provision of the Listing Rules which may at any time replace Appendix 6 as the provision which specifies the provisions of the Listing Rules required to be incorporated by reference in the constitutions of companies listed on NZX.

"**ASX**" means Australian Stock Exchange Limited.

"**ASX Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

"**Board**" means Directors who number not less than the required quorum acting together as the board of directors of the Company.

"**Class**" means a class of Securities having identical rights, privileges, limitations and conditions, and includes or excludes Securities which NZX in its discretion deems to be, or not to be, of that class.

"**Company**" means [HoldCo] Limited.

"**Constitution**" means this constitution, as altered from time to time.

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution.

"**Distribution**" has the meaning set out in section 2(1) of the Act.

"**Equity Security**" means an Equity Security as defined in the Listing Rules issued, or to be issued, by the Company, as the case may require.

"**Interest Group**" has the meaning set out in section 116 of the Act.

"**Interested**", in relation to a Director, has the meaning set out in section 139 of the Act.

"**Listing Rules**" means the Listing Rules of NZX in force from time to time.

"Loan Note" means a loan note issued by the Company on the terms and conditions set out in the Trust Deed.

"Managing Director" means a person appointed as a managing director of the Company under clause 29.1.

"[MergeCo]" means [*MergeCo Limited*].

"month" means calendar month.

"NZSX" means the main board equity security market operated by NZX.

"NZX" means New Zealand Exchange Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline).

"NZX Discipline" has the meaning in the Listing Rules.

"NZX Incorporation Rules" means those provisions of the Listing Rules specified in Appendix 6, as those provisions may be amended from time to time.

"Ordinary Resolution" means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

"Ordinary Share" means an ordinary voting Share in the capital of the Company.

"person" includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

"Personal Representative" means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

"Records" means the documents required to be kept by the Company under section 189(1) of the Act.

"Representative" means:

- (a) a person appointed as a proxy under section 24;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under section 25.

"Ruling" has the meaning in the Listing Rules.

"Seal" means the common seal of the Company adopted by the Board whether before or after registration of the Company under the Act.

"Share" means a share issued, or to be issued, by the Company, as the case may require.

"Shareholder" means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.

"Share Register" means the share register for the Company kept in accordance with the Act.

"Share Registrar" means an agent appointed by the Company to maintain the Share Register.

"Special Resolution" means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question.

"Stapled Security" means an Ordinary Share and a Loan Note which are Stapled together.

"Stapled Security Register" means the register of Stapled Securities to be established and maintained in accordance with clause 3.4.

"Stapling" means the linking together of Ordinary Shares and Loan Notes so that one may not be transferred, or otherwise dealt with, without the other and which are quoted on ASX and NZSX jointly as a "Stapled Security" or such other term as ASX and NZX permit and **"Stapled"** has a corresponding meaning.

"Stapling Commencement Date" means the date upon which the Stapling is to commence being the date on which Loan Notes are first issued.

"Stapling Provisions" means the provisions of this Constitution relating to, referring to or connected with Stapling and, for avoidance of doubt, includes those provisions relating to, referring to or connected with Stapling contained in clauses 1.5 to 1.9, 3.1 to 3.4, 5.4, 9.11, 10.7, 12.5, 13.11, 14.4, 17.5 and 38.2 (inclusive) and **"Stapling Provision"** has a corresponding meaning.

"Trust Deed" means the trust deed dated on or about [•] between the Company and the Trustee which governs the terms and conditions of issue of the Loan Notes.

"Trustee" means [•] or any successor trustee appointed under the Trust Deed.

"Working Day" has the meaning set out in section 2(1) of the Act.

1.2 **Definitions in the Listing Rules:** Words and expressions in this Constitution which commence with initial capital letters and are not defined in clause 1.1 but are defined in the Listing Rules have the respective meanings given to them by the Listing Rules.

1.3 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;

- (c) one gender includes the other genders;
- (d) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (e) "written" and "in writing" include any means of representing or reproducing words, figures and symbols in a tangible and visible form;
- (f) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (g) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning; and
- (h) words and expressions defined or explained in the Act have the same meaning in this Constitution.

1.4 Constitution to prevail over Act: If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

1.5 Application of Stapling Provisions: If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency. The Stapling Provisions prevail in this way even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

1.6 Effective time for Stapling: The Stapling Provisions only apply and come into effect in accordance with this clause 1.6. Each Ordinary Share will be Stapled to a Loan Note on the Stapling Commencement Date and the Stapling Provisions will apply and come into effect from that time.

1.7 Intentions concerning Stapled Securities: The Ordinary Shares are intended to be Stapled to Loan Notes in the ratio of one Ordinary Share to one Loan Note. It is the intention of the Company that:

- (a) the Shareholders holding Ordinary Shares shall be identical to the holders of Loan Notes, and shall hold an equal number of Ordinary Shares and Loan Notes;
- (b) as far as the law permits, an Ordinary Share and a Loan Note which are Stapled together shall be treated as one security;

- (c) no transfer of an Ordinary Share is to occur without one Loan Note being transferred at the same time from the same transferor to the same transferee; and
- (d) no Ordinary Share is to be issued unless one Loan Note is issued at the same time to the same person.

1.8 **Cessation of Stapling Provisions:**

- (a) Subject to approval by special resolution at a meeting of Shareholders, and approval by a special resolution of the holders of Loan Notes, the Board may determine that the Stapling Provisions will cease to apply on a date as determined by the Board. On and from the date on which Stapling ceases, the Board must do all things reasonably necessary to procure that each Ordinary Share ceases to be Stapled.
- (b) A determination by the Board under clause 1.8(a) that Shares will cease to be stapled does not prevent the Board from subsequently determining that the Stapling Provisions should recommence subject to approval by special resolution at a meeting of Shareholders, and approval by a special resolution of the holders of Loan Notes.
- (c) The Stapling Provisions will automatically cease to apply with effect from the time all of the Loan Notes have been converted into Ordinary Shares.

- 1.9 **Adjustment of Stapling Ratio:** If some (but not all) of the Loan Notes are redeemed or converted in accordance with the terms of the Trust Deed so that the number of Ordinary Shares on issue exceeds the number of Loan Notes on issue, the Board may take such action as it thinks fit (including sub-dividing or consolidating Ordinary Shares and/or adjusting the ratio in which Ordinary Shares are Stapled to Loan Notes) to ensure that each Ordinary Share is Stapled to one or more Loan Notes and in the same ratio as every other Ordinary Share. The provisions of this clause 1.9 apply notwithstanding any other provision of this Constitution.

2. **GENERAL - LISTING RULES**

- 2.1 **Companies Act 1993:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.
- 2.2 **NZX Incorporation Rules:** The NZX Incorporation Rules are deemed to be incorporated in this Constitution, and shall have effect as if they were set out in full in this Constitution. Without limiting the preceding sentence, if at any time the NZX Incorporation Rules require or permit any act or omission which would otherwise be in contravention of this Constitution, that act or omission is deemed to be allowed by this Constitution.
- 2.3 **Compliance with Listing Rules:** The Company shall comply with the Listing Rules, subject to:
- (a) the requirements of the Act and any other applicable legislative or regulatory requirements; and
 - (b) the terms of any Ruling given from time to time by NZX.
- 2.4 **Effect of failure to comply:** Failure to comply with:
- (a) the Listing Rules; or

- (b) any provision of this Constitution corresponding with a provision of the Listing Rules,

shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that:

- (c) a party to a transaction or contract who knew of the failure to comply with those Listing Rules or those provisions of this Constitution is not entitled to enforce that transaction or contract; and
- (d) this provision shall not affect the rights of any holder of any Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules or any provision of this Constitution.

2.5 **Effect of Ruling:** If NZX has given a Ruling authorising any act or omission, which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission is deemed to be authorised by the Listing Rules and by this Constitution notwithstanding such contravention or inconsistency.

2.6 **References to Listing Rules:** A reference in this Constitution to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

2.7 **Inconsistency with Listing Rules:** If any provision of this Constitution is inconsistent with the Listing Rules, that provision shall be deemed to be amended, or deleted, to the extent necessary to make that provision consistent with the Listing Rules.

2.8 **Cessation:** Clauses 2.2, 2.3 and 2.7 apply only for so long as the Company is party to a listing agreement with NZX. If the Company ceases to be party to a listing agreement with NZX those clauses shall cease to have effect.

2.9 **ASX Rules:** For so long as the Company is admitted to the Official List of the ASX:

- (a) notwithstanding anything contained in this Constitution, if the ASX Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the ASX Rules require to be done;
- (c) if the ASX Rules require or authorise an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the ASX Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the ASX Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

3. STAPLING

3.1 **Paramountcy:** The provisions of this section 3 apply notwithstanding any other provision of this Constitution, other than clause 1.9.

3.2 Stapling

- (a) From the Stapling Commencement Date, each Ordinary Share will be Stapled to one Loan Note to form a Stapled Security.
- (b) Each Ordinary Share (if any) issued before Stapling applies will from the Stapling Commencement Date become Stapled to one Loan Note to form a Stapled Security.
- (c) The number of issued Ordinary Shares must equal the number of issued Loan Notes.
- (d) This section 3 does not restrict the issue of Equity Securities which are not Ordinary Shares. Only Ordinary Shares will be Stapled to Loan Notes.

3.3 **Shares to remain Stapled:** Subject to clause 1.8, each Ordinary Share will remain Stapled for so long as those shares remain on issue. The Board and the Company must neither do any act, matter or thing nor omit to do any act, matter or thing if to do so or omit to do so, as the case may be, would result directly or indirectly in any Ordinary Share no longer being Stapled to a Loan Note to form a Stapled Security. In particular, the Board and the Company must not reorganise any Ordinary Shares unless at the same time there is a corresponding reorganisation of the Loan Notes so that the person holding Ordinary Shares holds an equal number of Loan Notes. For the purposes of this clause 3.3, the term "**reorganise**" includes any consolidation, division, cancellation, subdivision, buy back or reduction of any share capital.

3.4 **Stapled Security Register:** The Board must maintain or cause to be maintained the Stapled Security Register which records names and addresses of the Shareholders holding Ordinary Shares, the number of Ordinary Shares held, the number of Loan Notes held and any additional information required by the Act, the Listing Rules, the Securities Act 1978 or by the Board from time to time. The Board may establish and maintain a register jointly with the register of Loan Note holders provided for in the Trust Deed.

4. SHARES

4.1 **Rights and powers attaching to Shares:** Subject to any special rights or restrictions for the time being attached to any Share, and to the rights and restrictions set out elsewhere in this Constitution, each Share confers on the holder:

- (a) the right on a poll at a meeting of shareholders to one vote on each resolution (subject to clause 21.5 in the case of Shares which are not fully paid);
- (b) the right to an equal share in dividends authorised by the Board; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company.

4.2 **Classes of Shares:** Different Classes of Shares may be issued by the Company. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) ranks equally with, or in priority to, any existing Share;

- (b) confers preferential rights to distributions of capital or income;
- (c) confers special, limited or conditional voting rights;
- (d) does not confer voting rights;
- (e) is redeemable in accordance with Section 68 of the Act; or
- (f) is convertible.

4.3 **Consolidation and subdivision:** Subject to clause 3.3, the Board may:

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

5. ISSUE OF NEW SHARES AND EQUITY SECURITIES

5.1 **Powers of Board to issue:** Subject to the NZX Incorporation Rules and the Stapling Provisions, the Board may issue Shares or other Equity Securities, to any person and in any number it thinks fit. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company.

5.2 **Transfer of Rights:** Every person to whom unissued Equity Securities are offered pursuant to an offer complying with Listing Rule 7.3.4(a) may decline or accept the offer, or transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such transfer as they would have if the transfer were a transfer of Shares, and the provisions of this Constitution as to the transfer of Shares, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.

5.3 **Bonus issues:** Subject to the NZX Incorporation Rules, the Board may resolve to apply any amount which is available for Distribution either:

- (a) in paying up in full Shares or other Securities of the Company to be issued credited as fully paid to:
 - (i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause 5.3(a)(i),

or partly in one way and partly in the other.

5.4 **Issue of further Ordinary Shares:** The Board must not resolve to issue any Ordinary Shares to Shareholders unless, at the same time as the issue, an identical number of Loan Notes are issued to those Shareholders.

6. ALTERATION OF RIGHTS OF SECURITY HOLDERS

- 6.1 **Procedure in respect of Shares:** The Company shall, before taking action affecting the rights attached to any Shares, comply with the provisions of sections 116 and 117 of the Act.
- 6.2 **Issue of equal or prior ranking Shares:** For the purposes of clause 6.1, the issue of further Shares which rank equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be action affecting the rights attaching to those existing Shares.

7. ACQUISITION AND REDEMPTION OF EQUITY SECURITIES

- 7.1 **Powers to acquire, hold and redeem Securities:** The Company may:
- (a) purchase or otherwise acquire Shares or other Equity Securities from one or more of the holders;
 - (b) hold any Shares or other Equity Securities so purchased or acquired; and
 - (c) redeem any redeemable Shares or other Equity Securities held by one or more of the holders,

in accordance with the provisions, and subject to the restrictions, of the Act and this Constitution (including the NZX Incorporation Rules).

8. EQUITABLE INTERESTS IN SHARES

- 8.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.
- 8.2 **No recognition of equitable interests:** Except as required by law or by this Constitution, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

9. CALLS ON SHARES

- 9.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.
- 9.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 9.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 9.4 **Notice of call:** At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.

- 9.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 9.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 9.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 9.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.
- 9.9 **Proceedings for recovery of call:** In any proceedings for recovery of a call:
- (a) it is sufficient to prove that:
 - (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
 - (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given,and proof of the matters mentioned in this clause is conclusive evidence of the debt; and
 - (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.
- 9.10 **Payment in advance of calls:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.
- 9.11 **Stapling:** Any issue of partly paid Ordinary Shares shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to any partly paid Loan Note is also paid.

10. FORFEITURE OF SHARES

- 10.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.
- 10.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.
- 10.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made,

any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all Distributions declared in respect of the forfeited Share and not paid before the forfeiture.

- 10.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.
- 10.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.
- 10.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.
- 10.7 **Stapling:** Where a Share that is forfeited in accordance with this section 10 is an Ordinary Share, any Loan Note Stapled to such Ordinary Share shall also be forfeited and the forfeiture will affect the Loan Note in the same way as it affects the Ordinary Share.

11. LIEN ON SHARES

- 11.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:
- (a) all unpaid calls owing in respect of the Share and interest thereon (if any); and
 - (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived.
- 11.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 14.2.

12. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

- 12.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Share:
- (a) unless the amount in respect of which a lien exists is due and payable; and
 - (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Share.
- 12.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

- 12.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.
- 12.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.
- 12.5 **Stapling:** Where a Share to which this section 12 applies is an Ordinary Share which is Stapled to a Loan Note, the references in this section 12 to "Share" shall be deemed to include the Ordinary Share and the Loan Note.

13. TRANSFER OF SHARES

- 13.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:
- (a) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company;
 - (b) under any other share transfer system which operates in relation to the trading of securities on any stock exchange outside New Zealand on which Shares are listed and which is applicable to the Company; or
 - (c) by an instrument of transfer which complies with this Constitution.
- 13.2 **Method of transfer:** A Share which is disposed of in a transaction which complies with the requirements of a system of transfer authorised under clause 13.1(a) or 13.1(b) may be transferred in accordance with the requirements of that system. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.
- 13.3 **Other forms of transfer:** An instrument of transfer of Shares to which the provisions of clause 13.2 are not applicable shall:
- (a) be in any common form or any other form approved by the Company or the Share Registrar;
 - (b) be signed or executed by or on behalf of the transferor; and
 - (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.
- 13.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.
- 13.5 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) the transferor fails to produce such evidence as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
- (c) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in less than a Minimum Holding of Shares of the relevant Class standing in the name of the transferee,

provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

13.6 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

13.7 **Company to retain transfer:** If the Company registers an instrument of transfer it shall retain the instrument.

13.8 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places, and may be kept by one or more Share Registrars.

13.9 **Compulsory disposal when holding less than Minimum Holding:** The Board may at any time give notice to a Shareholder holding less than a Minimum Holding of Shares of any Class that if at the expiration of three months after the date the notice is given the Shareholder still holds less than a Minimum Holding of Shares of that Class, the Board may exercise the power of sale of those Shares set out in this clause. If that power of sale becomes exercisable:

- (a) The Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through the NZSX, or in some other manner approved by NZX.
- (b) The Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale.
- (c) The Company shall account to the Shareholder for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to, the Shareholder, on surrender of the certificate (if any) relating to the relevant Shares.
- (d) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

13.10 **Securities other than Shares:** The provisions of this section 13 shall apply, with any necessary modifications, to Securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules, or by law.

13.11 **Effect of Stapling:**

- (a) A transfer of an Ordinary Share will only be accepted as a transfer in registrable form if, in addition to the requirements of this section 13 and section 14, as the case may be, the transfer relates to, or is accompanied by a transfer of, the Loan Note to which the Ordinary Share is Stapled in favour of the transferee.
- (b) The Directors must not register a transfer of an Ordinary Share unless a Loan Note is also to be transferred simultaneously.
- (c) A transfer of an Ordinary Share which is not accompanied by a transfer referred to in clause 13.11(a) will be taken to authorise the Company as agent for the transferor to effect in accordance with the terms and conditions of the Trust Deed, a transfer of the Loan Note, to the same transferee.

14. TRANSMISSION OF SHARES

14.1 **Transmission on death of Shareholder:** If a Shareholder dies, the survivor, if the deceased was a joint Shareholder, or the Personal Representative shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

14.2 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:

- (a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and
- (b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.

14.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

14.4 **Stapling:** Notwithstanding any other provision in this Constitution, no person under this section 14 may become a registered holder of Ordinary Shares unless that person is also entitled to become the registered holder the Loan Notes to which those Ordinary Shares are Stapled.

15. DISTRIBUTIONS

15.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

15.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but except as provided in clause 15.3 shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

15.3 **Currency of payment:** The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

15.4 **Entitlement to dividends:** The Board shall not authorise a dividend:

- (a) in respect of some but not all the Shares in a Class; or
- (b) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.

15.5 **Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

15.6 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

15.7 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

15.8 **Payment of small Distribution amounts:** Where the net amount of a Distribution payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the Distribution to that Shareholder until the earlier of:

- (a) such time as that Shareholder has an aggregate entitlement to net Distributions of not less than such minimum amount; and
- (b) the date upon which that Shareholder ceases to hold any Shares.

15.9 **Unclaimed Distributions:** Dividends or other monetary Distributions unclaimed for more than one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

16. EXERCISE OF POWERS OF SHAREHOLDERS

16.1 **Alternative forms of meeting:** A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting.

16.2 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

17. MEETINGS OF SHAREHOLDERS

17.1 **Annual meetings:** The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act.

17.2 **Special meetings:** A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called by the Board at any time; and
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

17.3 **Time and place of meetings:** Each meeting of Shareholders shall be held at such time and place as the Board appoints.

17.4 **Meetings of Interest Groups:** A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

17.5 **Joint Meetings:** While Stapling applies, meetings of Shareholders may be held in conjunction with meetings of the holders of Loan Notes and the Board may make such rules, subject to the Act and this Constitution, for the conduct of such meetings as the Board determines.

18. NOTICE OF MEETINGS OF SHAREHOLDERS

18.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting, to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice, and in such manner, as those Shareholders agree.

- 18.2 **Contents of notice:** A notice of meeting shall state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it;
 - (b) the text of any Special Resolution to be submitted to the meeting; and
 - (c) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.
- 18.3 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two-way voting instructions to proxies.
- 18.4 **Waiver of notice irregularity:** An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 18.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.
- 18.6 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 18.1.
- 19. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**
- 19.1 **Requirement for quorum:** Subject to clause 19.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 19.2 **Quorum:** Subject to clause 19.3, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting, present in person or by Representative.
- 19.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.
- 19.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, a meeting of Shareholders may regulate its own procedure.
- 19.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

- 19.6 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.
- 19.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 19.6, the unfinished business of the meeting shall be dealt with as follows:
- (a) in respect of a resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
 - (b) in respect of a resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors; and
 - (c) the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with clause 23.4.

20. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 20.1 **Chairperson:** If the Directors have elected a chairperson of the Board and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 20.2 **Directors may appoint chairperson:** If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.
- 20.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

21. VOTING AT MEETINGS OF SHAREHOLDERS

- 21.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 16.1(a), unless a poll is demanded in accordance with clause 23.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 21.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 16.1(b), unless a poll is demanded in accordance with clause 23.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

- 21.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act shall apply, with such modifications (if any) as the Board thinks fit.
- 21.4 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.
- 21.5 **Number of votes:** Subject to clause 22.1 and to any rights or restrictions for the time being attached to any Share:
- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote; and
 - (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully paid Share held by that Shareholder, one vote; and
 - (ii) in respect of each Share held by that Shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Share bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).
- 21.6 **Vote of overseas protected persons:** A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, or other person of a similar nature appointed by that court, voting in person or by proxy.
- 21.7 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 23.1.
- 21.8 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 21.9 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

22. RESTRICTIONS ON VOTING

- 22.1 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

23. POLLS

- 23.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson;

- (b) not less than five Shareholders having the right to vote at the meeting;
- (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.

23.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

23.3 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

23.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

23.5 **Votes:** On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares; and
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

23.6 **Scrutineers:** The auditors shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.

23.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

24. PROXIES

24.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Shareholder.

24.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two-way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.

- 24.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 24.4 **Proxy form must not name proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.
- 24.5 **Receipt of proxy form:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or by the Share Registrar at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 48 hours before the start of the meeting.
- 24.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, or by the Share Registrar, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

25. CORPORATE REPRESENTATIVE

- 25.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

26. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 26.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.
- 26.2 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

27. DIRECTORS

- 27.1 **Maximum number:** The maximum number of Directors (other than Alternate Directors) is seven.
- 27.2 **Appointment by Shareholders:** Subject to clause 27.1 and the NZX Incorporation Rules, a person may be appointed as a Director at any time by an Ordinary Resolution.
- 27.3 **Appointment by Board:** Subject to clause 27.1 and the NZX Incorporation Rules, the Board may, at any time, appoint a person to be a Director.

- 27.4 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 27.5 **Exception to Rotation:** For the purposes of the NZX Incorporation Rules relating to rotation of directors, one Director who is also an employee of the Company (whether or not a Managing Director) is not required to retire by rotation. If there is more than one such Director, the one not required to retire by rotation shall be selected by the Board.
- 27.6 **Re-election of retiring Director:** A Director retiring by rotation at a meeting in accordance with the NZX Incorporation Rules shall, if standing for re-election, be deemed to have been re-elected unless:
- (a) some other person is elected to fill the vacated office;
 - (b) it is resolved not to fill the vacated office; or
 - (c) a resolution for the re-election of that Director is put to the meeting and lost.
- 27.7 **Restriction on appointment of several Directors by single resolution:** A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.
- 27.8 **Vacation of office:** A Director ceases to be a Director if he or she:
- (a) is removed from office by an Ordinary Resolution;
 - (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988;
 - (c) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice);
 - (d) becomes disqualified from being a Director pursuant to the Act;
 - (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
 - (f) has for more than six months been absent without approval of the Board from meetings of the Board held during that period.
- 27.9 **Timing of retirement and appointment:** If:
- (a) a Director retires at a meeting of shareholders and is not re-elected or deemed to be re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
 - (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting; or
 - (c) a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

28. ALTERNATE DIRECTORS

28.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 28.

28.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her ("**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor; and
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

28.3 **Remuneration and expenses:** An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

28.4 **Cessation of appointment:** An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company;
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

29. MANAGING DIRECTORS

29.1 **Appointment:** The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding five years, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may at any time revoke such appointment.

29.2 **Resignation:** A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director.

29.3 **Remuneration:** A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

30. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

- 30.1 **Restriction on authorisation:** The Board may, subject to the NZX Incorporation Rules, exercise the power conferred by section 161 of the Act to authorise payments and other benefits to and for Directors.
- 30.2 **Payment of expenses:** Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.
- 30.3 **Special remuneration:** Without limiting clause 30.1, the Board may authorise the Company to pay special remuneration to any Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

31. INDEMNITY AND INSURANCE

- 31.1 **Indemnity of Directors:** Subject to clause 31.3, every Director shall be indemnified by the Company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
 - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in his or her capacity as a Director or a director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment, but shall be subject to any limitations contained in any deed or agreement from time to time in force between the Company and the Director relating to indemnities.

- 31.2 **Other indemnities:** Subject to clause 31.3, the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:
- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
 - (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.
- 31.3 **Exceptions:** An indemnity conferred by clause 31.1(b), or given pursuant to clause 31.2(b), shall not apply in respect of:
- (a) any criminal liability;

- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

31.4 **Express indemnity:** Without limiting the indemnity conferred by clause 31.1 the Company may, with the prior approval of the Board, by deed or agreement grant in favour of any Director an express indemnity to the same effect as that conferred by clause 31.1, but subject (insofar as that indemnity relates to the matters referred to in clause 31.1(b)) to the exceptions in clause 31.3.

31.5 **Insurance:** The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity;
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

31.6 **Definitions:** In this section 31:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

32. POWERS OF DIRECTORS

32.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

32.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

32.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.

32.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

32.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

32.6 **Change of name of Company:** The Board shall not authorise a change of name of the Company without the prior approval of Shareholders.

33. INTERESTS OF DIRECTORS

33.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 33.2.

33.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to the NZX Incorporation Rules and to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

34. PROCEEDINGS OF BOARD

34.1 **Third schedule to Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

34.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

34.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

- 34.4 **Convening of meetings:** A Director, or an employee of the Company at the request of a Director, may convene a meeting of the Board by giving notice in accordance with clause 34.5.
- 34.5 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings):
- (a) Not less than two clear days' notice of a meeting shall be sent to each Director, unless:
 - (i) the Director waives that right; or
 - (ii) in the opinion of the chairperson or of directors who would together constitute a quorum at the meeting, the meeting is necessary as a matter of urgency, in which event such notice as is practicable in the circumstances shall be given.
 - (b) Notice to a Director of a meeting may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
 - (c) A notice of meeting shall:
 - (i) specify the date, time and place of the meeting;
 - (ii) in the case of a meeting by means of audio, or audio and visual, communication, specify the manner in which each Director may participate in the proceedings of the meeting; and
 - (iii) give an indication of the matters to be discussed, in sufficient detail to enable a reasonable Director to appreciate the general import of the matters, unless this is already known to all the Directors or is impracticable in any particular circumstances.
 - (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
 - (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, three days after it is posted;

- (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director; or
 - (v) in the case of electronic means, at the time of transmission.
 - (e) If all reasonable efforts have been made to give notice of a meeting to a Director in accordance with this clause 34.5 but the Director cannot be contacted, notice of the meeting shall be deemed to have been duly given to that Director.
- 34.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.
- 34.7 **Quorum:** A quorum for consideration of any matter at a meeting of the Board is three Directors present and entitled to vote on the matter, or such greater number as the Board may from time to time determine. No matter may be considered at a meeting of the Board if a quorum for the purposes of the matter is not present.
- 34.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number (if any) fixed by the NZX Incorporation Rules, the continuing Directors may act only for the purposes of increasing the number of Directors to that number or calling a meeting of the Shareholders.
- 34.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall chair all meetings of the Directors. If at any time there is no such chairperson or deputy chairperson, or if at any meeting the chairperson or deputy chairperson is not present within 10 minutes after the time appointed for holding the meeting, or is present but not entitled to vote on a particular matter, the Directors present may choose one of their number to be chairperson of the meeting, or for consideration of the particular matter, as the case may be.
- 34.10 **Voting:** Every Director has one vote. In the case of an equality of votes, the chairperson has a casting vote. A resolution of the Board is passed if it is agreed to without dissent by all Directors present and entitled to vote on the resolution, or if a majority of the votes cast on it are in favour of the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from, or votes against, or expressly abstains from voting on, the resolution at the meeting.
- 34.11 **Written resolution:** A resolution in writing, signed or assented to by all the Directors entitled to vote on the resolution is as valid and effective as if passed at a meeting of the Board duly convened and held provided those Directors would constitute a quorum for consideration of the resolution at a meeting of the Board. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records.
- 34.12 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

- 34.13 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.
- 34.14 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 34.15 **Board to manage in accordance with objectives:** The Company's business and affairs must be managed by, or under the direction or supervision of, the Board, except to the extent that the Act or this Constitution (including the NZX Incorporation Rules) provides otherwise.

35. METHOD OF CONTRACTING

- 35.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company, by:
- (a) two or more Directors;
 - (b) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
 - (c) one or more attorneys appointed by the Company.
- 35.2 **Seal:** The Company is not limited or prevented from entering into a contract or other enforceable obligation in writing under Seal, if the Board resolves to adopt a Seal. The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors in that behalf; and every instrument to which the Seal is affixed shall be signed in accordance with clause 35.1.
- 35.3 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.
- 35.4 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

36. INSPECTION OF RECORDS

- 36.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.
- 36.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

37. NOTICES

- 37.1 **Method of service:** All notices, reports, accounts and other documents required to be sent:
- (a) to a Shareholder, shall be sent in the manner provided in section 391 of the Act; or
 - (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.
- 37.2 **Service of notices overseas:** If the holder of a Share or other Equity Security has not given to the Company or the Share Registrar an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such address and shall be deemed to have been received by that holder 24 hours after the time of posting.
- 37.3 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.
- 37.4 **Joint Shareholders:** A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the register in respect of that Equity Security.
- 37.5 **Shareholder deceased or bankrupt:** If the holder of an Equity Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.
- 37.6 **Waiver by Shareholders:** Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

38. LIQUIDATION

- 38.1 **Distribution of assets:** If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:
- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
 - (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.
- 38.2 **Notice to Trustee:** On or before the commencement of a winding up of the Company in accordance with this section 38, the liquidator must give the Trustee written notice that the

Company is to be wound up. Notwithstanding any other terms of this Constitution, should the Trust Deed be terminated in accordance with its terms or by force of law, the Stapling Provisions will cease to apply.

SCHEDULE 3
Co-operation Agreement

SCHEDULE 3

DUBAI AEROSPACE ENTERPRISE (DAE) LTD

AUCKLAND AIRPORT LIMITED

CO-OPERATION AGREEMENT

RUSSELL McVEAGH

AGREEMENT dated

200[]

PARTIES

DUBAI AEROSPACE ENTERPRISE (DAE) LTD (“DAE”)

AUCKLAND AIRPORT LIMITED (“AAL”)

INTRODUCTION

- A. MergeCo is a wholly owned subsidiary of AAL.
- B. By virtue of an amalgamation under Part XIII of the Companies Act 1993 which became effective on or before the date of this agreement:
- (a) MergeCo succeeded to the business formerly carried on by AIAL;
 - (b) DAE, through its wholly-owned subsidiary [●] (“**DAE Sub**”), subscribed for between 1,275,622,032 and 1,500,622,032 stapled securities (each comprising one ordinary share and one loan note) in AAL so that DAE Sub now holds between 51% and 60% of the stapled securities of AAL.
- C. DAE and AAL enter into this agreement to record the terms of their future relationship, including how they will cooperate and work together to promote and enhance the Business, and to pursue opportunities.

AGREEMENT

1. INTERPRETATION

1.1 In this agreement unless the context otherwise requires:

"**AIAL**" means Auckland International Airport Limited (company number 3800357).

"**Airport Opportunities**" has the meaning set out in clause 0.

"**Board**" means the board of Directors of AAL.

"**Business**" means the business formerly carried on by AIAL, and now carried on by MergeCo, of owning and operating an airport and associated facilities at Auckland, New Zealand.

"**Business Plan**" means the five year corporate plan for the financial years from 2008 to 2012 inclusive adopted by the board of AIAL entitled "Our Strategy for New Zealand's Airport".

"**DAE Airports**" means the division of DAE called DAE Airports, and if that division is corporatised means the relevant subsidiary acceding to the business of that division.

"**DAE Director**" means a Director nominated by DAE Sub in accordance with clause 8.1(b).

"**DAE Sub**" has the meaning set out in paragraph B(b) of the Introduction to this agreement.

"**Director**" means a person appointed as a director of AAL.

"**DAE Group**" means DAE, and each company or other body corporate which is wholly owned, directly or indirectly, by DAE.

"**Dividend Policy**" has the meaning set out in the Merger Implementation Agreement.

"**Listing Rules**" means, as the context may require, the listing rules of the Australian Securities Exchange and the NZSX Listing Rules.

"**Loan Note Terms**" means the terms of the HoldCo Loan Notes (as defined in the Merger Implementation Agreement).

"**Independent Director**" has the meaning set out in the NZSX Listing Rules.

"**MergeCo**" means [MergeCo Limited].

"**Merger Implementation Agreement**" means the agreement described as such and entered into by DAE and AIAL dated [●] 2007.

"**NZSX Listing Rules**" means the listing rules of New Zealand Exchange Limited in force from time to time.

"**Ordinary Shares**" means ordinary voting shares in the capital of AAL.

1.2 In this agreement unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this agreement;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) references to individuals include companies and other corporations and vice versa;
- (e) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision; and
- (f) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time.

1.3 Whenever this agreement expresses an obligation to be an obligation of the DAE Group, DAE has an obligation to use its best endeavours to cause all relevant members of the DAE Group to perform that obligation.

2. PRINCIPLES

2.1 The parties agree that it is their intention that:

- (a) they will cooperate to the fullest extent to develop and support the Business;
- (b) the DAE Group will make the experience, expertise and resources of the DAE Group in all areas relevant to the Business available to AAL and MergeCo on (other than expertise provided in accordance with clause 2.1(c)) an arms length

basis, unless otherwise agreed between the parties on a case by case basis;
and

- (c) DAE will procure that DAE Airports will make strategic and operational expertise available to AAL and MergeCo and will not look to recover costs for this.

2.2 DAE shall use reasonable endeavours to procure that its direct shareholders (other than the Dubai Government) act in a manner which is consistent with, and assists the DAE Group to fulfil, the obligations of DAE Group under this agreement.

3. BUSINESS PLAN

3.1 DAE confirms that the DAE Group supports the vision and strategy for the Business recorded in the Business Plan.

3.2 Without limiting clause 0, DAE confirms that it supports the following objectives for the Business:

- (a) to grow New Zealand tourism and business;
- (b) to provide a unique and compelling New Zealand airport experience;
- (c) to deliver outstanding customer service;
- (d) to operate in a safe, secure, sustainable and efficient manner;
- (e) to enhance the people capability and performance of the Business;
- (f) to create long term value for the owners of AAL; and
- (g) a desire to expand the Business beyond the existing Auckland Airport site.

4. TOURISM GROWTH

4.1 The DAE Group shall use reasonable endeavours to:

- (a) support the growth of New Zealand tourism, and consequently growth in passenger volumes for the Business;
- (b) assist MergeCo to progress route development opportunities, including in particular new services and carriers to and from Dubai and other places in the Middle East; and
- (c) enhance the relationship between the Business and Emirates Airlines with a view to increasing New Zealand tourism and creating new routes and services to Auckland.

5. PROVISION OF ASSISTANCE AND TRAINING

5.1 The DAE Group shall use reasonable endeavours to:

- (a) provide to AAL and the Business access to and the benefit of the expertise, technology, know-how and experience of the DAE Group in connection with airports and airport investments and operations;

- (b) arrange employment (or exchange programmes) for appropriately qualified staff of the Business in appropriate positions in the DAE Group;
- (c) facilitate the training of management staff of the Business at the DAE University; and
- (d) support the property development strategy of the Business, including commercial, retail, office, hotel, conference centre and tourism development, and to procure for the Business in respect of property development the support and assistance of relevant shareholders of the DAE Group.

All of the assistance to be provided under this clause 5.1 shall be provided on an arms length basis except to the extent that clause 2.1(c) applies to any assistance provided by DAE Airports.

6. CLOSER RELATIONSHIPS

- 6.1 The DAE Group and AAL shall cooperate, and use reasonable endeavours, to promote enhanced relationships, trade, and investment between New Zealand and Dubai and the United Arab Emirates.

7. OPPORTUNITIES AND FURTHER INVESTMENT

- 7.1 The parties shall consult with each other regularly in respect of opportunities for investment in, or development or management of, airports ("**Airport Opportunities**") which are being considered or pursued by the DAE Group. DAE acknowledges that AAL is a preferred partner of the DAE Group for investment in, and/or operation of, airports worldwide, and the DAE Group will use reasonable endeavours to involve AAL in airport investments in which AAL wishes to be involved (as further specified in clause 0).

- 7.2 Without limiting the generality of clause 7.1, it is specifically agreed as follows:

- (a) AAL shall have a first right of refusal to pursue Airport Opportunities in New Zealand and Australia and DAE shall not, and shall procure that no other member of the DAE Group shall, pursue any Airport Opportunity in New Zealand or Australia unless AAL has given DAE notice in writing that AAL does not wish to pursue such Airport Opportunity.
- (b) If DAE (or any member of the DAE Group) intends to pursue an Airport Opportunity in any other country worldwide, DAE shall (and shall procure that the members of the DAE Group will) use its reasonable endeavours to ensure that AAL is afforded the opportunity to participate in such Airport Opportunity in circumstances where:
 - (i) DAE (or the relevant member of the DAE Group) intends to involve a third party and where AAL possesses the relevant experience or other characteristics required to fulfill such role;
 - (ii) AAL's proposed participation would be generally consistent with:
 - (aa) AAL's vision and strategy for the Business, as specified in the Business Plan; and
 - (bb) the objectives for the Business set out in clause 3.2; and

(iii) AAL's participation is consistent with DAE's desired level of overall investment in the opportunity.

(c) Any offer to AAL to participate in an Airport Opportunity under this clause 7.2 shall be open to AAL for acceptance for a reasonable period of time, following which AAL will be deemed to have declined the offer to participate.

7.3 If AAL is to make an airport investment (including, without limitation, investment in a new airport or investment relating to the development of an existing airport), and the Directors resolve to issue further stapled securities or other equity to fund that investment, then, unless the parties otherwise agree, DAE shall procure that DAE Sub contributes a proportion of that equity equivalent to its existing proportionate holding of stapled securities of AAL.

8. COMPOSITION OF BOARD AND VOTING

8.1 Subject to clause 8.4:

- (a) The parties acknowledge that the Board will be constituted of seven Directors. The Directors shall also be directors of MergeCo.
- (b) DAE acknowledges on behalf of DAE Sub that DAE Sub may nominate no more than three people to hold appointment as Directors at any one time.
- (c) Each other Director shall be a director who does not have a Disqualifying Relationship (as defined in the NZSX Listing Rules) by reason of any relationship with the DAE Group or being an Associated Person (as defined in the NZSX Listing Rules) of the DAE Group or by reason of an Associated Person of that director having a relationship with the DAE Group and DAE Sub shall be entitled to vote on the appointment and removal of each such Director.

8.2 AAL must not, and must ensure that MergeCo does not:

- (a) without prejudice to clause 8.2(b), incur or enter into any agreement to incur capital expenditure over NZ\$50 million in respect of a single project, or related series of projects, or enter into any contract or make any acquisition having a cost or value over NZ\$50 million;
- (b) pursue any Airport Opportunity, other than an Airport Opportunity of the nature referred to in clause 7.2;
- (c) change the Dividend Policy; or
- (d) issue any securities,

unless, in addition to any other approvals which may be required under law or the Listing Rules, the relevant matter has been approved by at least two thirds of all appointed Directors (rounded up to the nearest whole number of Directors) in the case of AAL or at least two thirds of all appointed directors of MergeCo (rounded up to the nearest whole number of directors of MergeCo) in the case of MergeCo, as applicable.

8.3 The chairman of the Board shall be an Independent Director and shall also be the chairman of the board of MergeCo.

8.4 Subject to clause 11, this section 8 shall continue to apply until terminated by either:

- (a) DAE by giving not less than one month's prior written notice to AAL, which notice may be given at any time on or after the date falling two years after the date of this agreement; or
- (b) AAL by giving not less than one month's prior written notice to DAE, which notice may be given at any time on or after the date on which DAE Sub no longer holds the largest shareholding in AAL. The termination right in this clause 0(b) may only be exercised by AAL on the instructions of the Independent Directors of AAL (acting by majority).

9. CREDIT RATING

- 9.1 DAE acknowledges that, and agrees with, the policy of AAL is to maintain an investment grade credit rating from Standard & Poor's, Moody's or Fitch (with at least a stable outlook, if the credit rating is the lowest investment grade credit rating), except where the failure to maintain such a rating is due to external events or other factors beyond AAL's control.
- 9.2 DAE acknowledges that the Dividend Policy of AAL needs to ensure a capital structure consistent with the investment grade credit rating referred to in clause 9.1.
- 9.3 Where the Directors of AAL resolve that it is necessary to undertake a rights issue, placement or any other issue of securities in order to prevent its credit rating from being downgraded below the investment grade credit rating referred to in clause 9.1, DAE shall, subject to compliance with any applicable provisions of the New Zealand Takeovers Code and the Listing Rules, procure that DAE Sub applies for a proportion of that securities issue equivalent to its existing proportionate holding of stapled securities of AAL.

10. ACKNOWLEDGEMENTS

- 10.1 DAE and AAL acknowledge (without limiting any other requirement of New Zealand law or the Listing Rules) that:
 - (a) under the Listing Rules and the Securities Markets Act 1988, there are limitations on the nature of information about AAL and the Business which AAL can provide to the DAE Group; and
 - (b) under the Listing Rules, there are limitations on the nature of transactions which may take place between members of the DAE Group and AAL and/or MergeCo, unless the approval of an ordinary resolution of shareholders of AAL (excluding members of the DAE Group) is first obtained.
- 10.2 Notwithstanding clause 10.1(a) but subject to the Listing Rules, AAL shall establish a protocol consistent with market practice, permitting the provision of information about AAL and the Business to the DAE Group.

11. TERM

- 11.1 The term of this agreement shall commence on the date on which it is last signed by a party to it and shall terminate on the first date on which the DAE Group holds less than 33% of all of the Ordinary Shares.

12. ASSIGNMENT

12.1 Neither party shall directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under, or in connection with, this agreement except with the prior consent of the other party, which consent may be withheld in the absolute discretion of the other party.

13. GENERAL

13.1 This agreement may only be amended, supplemented or novated in writing executed by both parties.

13.2 Each party shall pay its own costs of the negotiation, preparation, and execution of this agreement.

13.3 This agreement may be executed in any number of counterparts (including facsimile or email copies) and provided that each party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties.

13.4 This agreement constitutes the entire agreement, understanding and arrangement (express and implied) between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding and arrangement relating to that subject matter whether written or oral.

13.5 Each party shall make all applications, execute all documents and do all acts and things necessary to implement and to carry out its obligations under this agreement.

13.6 Every notice to be given under, or in connection with, this agreement shall be given in writing by:

- (a) personal delivery;
- (b) mailing by pre-paid post, and shall be deemed to be given two Business Days after (but exclusive of) the date of mailing; or
- (c) facsimile transmission, and shall be deemed to be given at the time specified in the facsimile transmission report of the facsimile from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice unless that party proves that, contrary to the transmission report, it was not transmitted, or it was not transmitted in a complete and legible state, to that party's facsimile;

to the addresses specified below or if a written notice of change of address is given then to the new address:

To:	Auckland International Airport Limited
Full address	Jean Batten International Terminal Auckland International Airport Auckland NEW ZEALAND
Phone	+64 9 256 8180
Fax	+64 9 275 4927
Contact person/position:	Charles Spillane Corporate Secretary

To:	Dubai Aerospace Enterprise (DAE) Ltd
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Full address Level 3, Building 4
 The Gate Precinct
 Dubai International Finance Centre
 Dubai
 PO Box 506592
 UNITED ARAB EMIRATES

Phone +971 4 318 7600
 Fax +971 4 425 0384
 Contact person/position: Mark Craig,
 General Counsel

Notwithstanding any other provision contained in this clause any notice given after 5pm, or on a day which is not a Business Day, shall be deemed to be given at 9am on the next Business Day.

- 13.7 Nothing in this agreement shall create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties, and a party may not make, or allow to be made, any representation that any such relationship exists between the parties. A party shall not have the authority to act for, or to incur any obligation on behalf of, the other party, except as expressly provided for in this agreement.
- 13.8 If any provision of this agreement is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this agreement without affecting the validity of the remainder of this agreement and shall not affect the enforceability, legality, validity or application of any other provision of this agreement.
- 13.9 Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, this agreement shall not operate as a waiver of such right, power or remedy. A waiver of any breach of any provision of this agreement shall not be effective unless that waiver is in writing and is signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.
- 13.10 This agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement.
- 13.11 Any notice of any proceeding, judgment or other process in connection with any proceeding or other process in New Zealand under or in connection with this agreement, shall be correctly serviced if addressed to DAE and given as provided in clause 13.6 to DAE's irrevocably appointed process agent at the following address for service in New Zealand:

Name: c/- Mayne Wetherell

Address: Level 23, IAG House

151 Queen Street

Auckland

NEW ZEALAND

Facsimile: +64 9 921 6001

Contact person/position: Michael Harrod

Partner

If such process agent at any time ceases to be able or willing to act as the process agent for DAE, DAE shall forthwith irrevocably appoint a replacement process agent who shall be in the same city as the original process agent and shall provide AAL with the replacement process agent's written acceptance of appointment, full address, facsimile number and name and position of the contact person.

SIGNATURES

DUBAI AEROSPACE ENTERPRISE (DAE) LTD by:

Authorised Signatory

Authorised Signatory

Name of Authorised Signatory

Name of Authorised Signatory

AUCKLAND AIRPORT LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

SCHEDULE 4

Standstill Deed

SCHEDULE 4

DUBAI AEROSPACE ENTERPRISE (DAE) LTD

[DAE SHAREHOLDING ENTITY]

HOLDCO LIMITED

STANDSTILL DEED
DATED 2007

PARTIES

DUBAI AEROSPACE ENTERPRISE (DAE) LTD (“DAE”)

[DAE SHAREHOLDING ENTITY] (“DAE Sub”)

HOLDCO LIMITED (“HoldCo”)

INTRODUCTION

- A. DAE Sub is to subscribe for the HoldCo Securities.
- B. The HoldCo Securities are to be issued in terms of an amalgamation pursuant to part XIII of the Companies Act 1993 between MergeCo (a wholly owned subsidiary of HoldCo) and AIAL.
- C. It is a requirement of that amalgamation that DAE and DAE Sub enter into this deed with HoldCo.

DEED

1. INTERPRETATION

1.1 In this deed unless the context otherwise requires:

“**AIAL**” means Auckland International Airport Limited;

“**Co-operation Agreement**” means the co-operation agreement to be entered into between HoldCo and DAE on or about the date of this deed.

“**Effective Date**” means the date on which the amalgamation between AIAL and MergeCo under Part XIII of the Companies Act 1993 comes into effect under that Act.

“**HoldCo Securities**” means [number] Stapled Securities to be issued by HoldCo to DAE Sub, and any other securities which may be issued to or acquired by DAE Sub by reason of DAE Sub holding those Stapled Securities, including without limitation:

- (a) securities (whether of HoldCo or of an entity involved in a merger or amalgamation with HoldCo) issued to or acquired by DAE Sub in exchange for those Stapled Securities, in any merger, amalgamation, or reconstruction affecting HoldCo; and
- (b) securities received by DAE Sub in respect of those Stapled Securities on a bonus issue made by HoldCo;

“**DAE Group**” means DAE, and each company or other body corporate (other than HoldCo or subsidiaries of HoldCo) which is controlled by DAE.

“**Listing Rules**” means the listing rules of New Zealand Exchange Limited.

“**MergeCo**” means [MergeCo Limited];

“**Stapled Securities**” means stapled securities (each comprising one ordinary share and one loan note) issued by HoldCo, and includes any securities issued to or acquired by a

holder of such securities by reason of a reconstruction, merger, or amalgamation affecting HoldCo;

“**Term**” means the period from the date of this deed to the date two years after the Effective Date.

Expressions defined in the Takeovers Code 2001 have the same meaning in this deed.

1.2 **References:** In this deed unless the context otherwise requires:

- (a) headings are inserted for convenience only and shall be ignored in construing this deed;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) references to individuals include companies and other corporations and vice versa;
- (e) a reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision;
- (f) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time.

2. **STANDSTILL**

2.1 DAE Sub shall not during the Term (subject to clauses 2.2 and 2.4):

- (a) sell or otherwise dispose of legal or beneficial ownership of the HoldCo Securities; or
- (b) pass to any other person control of any voting rights attached to the HoldCo Securities; or
- (c) agree to do (including by way of omission) anything referred to in subclause 2.1(a) or 2.1(b).

2.2 Clause 2.1 does not prevent DAE Sub from:

- (a) appointing a person as a proxy or voting representative of DAE to vote at a meeting of holders of Stapled Securities, so long as that person is at all times subject to the direction of DAE in respect of the exercise of voting rights attached to the HoldCo Securities; or
- (b) granting a security interest (as defined in the Personal Property Securities Act 1999) over the HoldCo Securities in relation to a bona fide transaction for the lending of money or the provision of financial services, so long as the grantor of that security interest, unless DAE defaults in the performance of its obligations in respect of that transaction, does not control voting rights attached to the HoldCo Securities.

2.3 DAE shall not, and shall procure that no member of the DAE Group shall, during the Term (subject to clause 2.4):

- (a) acquire, agree to acquire or make any invitation, offer or proposal to acquire a relevant interest (as defined in the Securities Markets Act 1988) directly or indirectly in any Stapled Securities or any rights or options to acquire such securities; or
- (b) advise, assist or encourage any other person to do any of the things referred to in subclause 2.3(a).

2.4 Clauses 2.1 and 2.3 do not prevent DAE Sub from:

- (a) acquiring Stapled Securities in accordance with clauses 7.3 or 9.3 of the Co-operation Agreement;
- (b) participating in any new issue of Stapled Securities so that its proportionate ownership of Stapled Securities following such issue remains at the same level as it was immediately prior to such issue;
- (c) acquiring or disposing of Stapled Securities such that its proportionate ownership of Stapled Securities immediately after such acquisition or disposal is at the same level as it is immediately following the issue of Stapled Securities under the amalgamation referred to in the Introduction to this agreement; or
- (d) taking any of the actions referred to in clauses 2.1 and 2.3 where the legal or beneficial ownership of, control of voting rights attached to, or relevant interest in, HoldCo securities is, or is to be, acquired from or disposed of or passed to one or more wholly-owned subsidiaries of DAE provided that:
 - (i) DAE shall procure that each such subsidiary complies with the provisions of this deed as if named in this deed as DAE Sub; and
 - (ii) before any such subsidiary ceases to be a wholly-owned subsidiary of DAE, DAE shall ensure that the HoldCo Securities, or interest in or voting rights attached to HoldCo Securities, held by that subsidiary are transferred to another wholly-owned subsidiary of DAE (and shall comply with (i) above in respect of such subsidiary).

2.5 Subject to the Listing Rules, the restrictions in clauses 2.1 and 2.3 shall cease to apply if the Independent Directors (as defined in the Listing Rules) of HoldCo unanimously resolve that it is in the best interests of HoldCo they should cease to apply.

3. SEVERANCE

3.1 If any provision of this deed is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this deed without affecting the validity of the remainder of this deed and shall not affect the enforceability, legality, validity or application of any other provision of this deed.

4. GOVERNING LAW

4.1 This deed is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this deed.

5. **PROCESS AGENT**

5.1 DAE has appointed Mayne Wetherell (Michael Harrod) of Level 23, IAG House 151 Queen Street Auckland as its agent for the service of process in New Zealand for any matter or dispute arising out of or in connection with this deed. This clause does not affect the right to serve process in any other matter permitted by law or the right to bring proceedings in any other jurisdiction.

SIGNED AS A DEED

**DUBAI AEROSPACE ENTERPRISE
(DAE) LTD** by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

[DAE SUB] by:

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

[HOLDCO] by:

Signature of director

Signature of director

Name of director

Name of director

SCHEDULE 5

Announcement

23 July 2007

\$5.6 billion proposal for Auckland Airport

The directors of Auckland International Airport Limited (AIAL) today announced a proposed transaction with Dubai Aerospace Enterprise (DAE) which would see DAE acquire an interest between 51% and 60% in the AIAL business and become a strategic partner. Under the proposal, AIAL shareholders will receive value of up to NZ\$3.80 per share. The directors of AIAL have unanimously recommended the proposed transaction. This decision was reached in the absence of a superior proposal.

Chairman of the board of AIAL, John Maasland, said the proposal involves an amalgamation and the establishment of a new company, Auckland Airport Limited, in which DAE would invest up to NZ\$2.6 billion and hold between 51% and 60% of the shares.

DAE is a global aerospace manufacturing and services corporation that is seeking to become a major player in the international aerospace industry.

Shareholders will be asked to vote on the proposal at a meeting in November 2007. Under the Merger Implementation Agreement, a copy of which is attached, the AIAL board is not restricted from considering competing proposals from other parties and making a recommendation to shareholders if the board believes another proposal would provide a better outcome for shareholders. In these circumstances, the board has the ability to terminate the Merger Implementation Agreement after consultation with DAE.

If the proposal is approved by shareholders and completed, AIAL and DAE will enter into a Co-operation Agreement. Under this agreement, DAE confirms its commitment to enhance AIAL's existing business, and working with AIAL to pursue new opportunities beyond the existing airport site.

"We believe DAE will bring additional aviation and tourism development experience to the New Zealand business. This partnership should deliver significant benefits to the company and New Zealand tourism as a whole," said Mr Maasland.

“The DAE offer gives AIAL shareholders a range of options to achieve an equivalent value of up to NZ\$3.80 per share. This value represents a premium to shareholders of 55.9% to the average trading price over a one month period prior to 5 May 2007, when takeover speculation around the company arose. This represents an Enterprise value for AIAL of \$5.6bn.

The base proposal is for shareholders to receive NZ\$2.34 cash per share, a new stapled security¹ (share plus loan note) in Auckland Airport Limited plus a final fully imputed dividend from AIAL of NZ\$0.07 per share.

Shareholders can elect a preference to take “more stapled securities and less cash”, or “more cash”. The final allocation of cash or stapled securities for those shareholders electing out of the base proposal will be on a pro rata basis and will be dependant on the composition of all shareholder elections.

DAE is providing an additional pool of up to NZ\$312.75 million for those AIAL shareholders who express a preference to receive more cash and whose preference is not initially met. From this additional cash pool DAE will acquire stapled securities at NZ\$1.39 per security. This increases the ability of those shareholders who elect the “more cash” offer to be satisfied and could see DAE’s shareholding increase to a cap of 60%.

Auckland Airport Limited will be listed on the New Zealand and Australian stock exchanges as AIAL is currently. The board will comprise seven directors, three appointed by DAE and four, including an independent chairman, from the existing board.

Bob Johnson, DAE’s chief executive officer said today that DAE regarded the proposed transaction as a significant development with exciting potential for both parties.

“Auckland Airport Limited will be a cornerstone investment for DAE and as such, will receive our considerable support to continue to successfully develop the business on the global stage,” he said.

Mr Maasland said there had been a significant increase in interest in AIAL from a wide range of parties including infrastructure and pension funds in recent months.

¹ Stapled securities comprise a convertible loan note stapled to an ordinary share. Although each security is legally separate, they are traded together at a single market price.

“This level of interest is not surprising, given that Auckland International Airport is the only standalone listed asset of its kind in Australasia and is widely recognised as a well managed and highly efficient operation.

The board considered that any proposal needed to not only achieve a premium for shareholders, but to also introduce an industry partner who would further enhance our plans for growth and development”.

Mr Maasland said the board was also keen to see shareholders have the opportunity to continue to participate in the success of the company. Under this proposal with DAE they are able to do so via the establishment of the new airport company.

“We look forward to discussing further detail about the merits of this proposal with shareholders and other stakeholders in the weeks ahead,” he said.

To conclude a transaction both AIAL and DAE require confirmation of at least a BBB- / Stable credit rating from Standard and Poor’s and confirmation from the independent expert that the transaction is fair and reasonable. AIAL has appointed Grant Samuel & Associates Limited to prepare an independent report on the proposed transaction. A copy of the independent report, the amalgamation proposal, a prospectus and investment statement relating to the stapled securities will be issued to shareholders in October 2007.

The transaction is subject to 75% AIAL shareholder approval and also requires Overseas Investment Office approval.

- ends -

About DAE:

DAE is a fast developing global aerospace, manufacturing and services corporation made up of six divisions – DAE Airports, DAE Capital, DAE Engineering, DAE Manufacturing, DAE Services and DAE University.

Headquartered in Dubai, the group is growing through a series of phased developments and acquisitions to become a global player and to produce an integrated aerospace cluster, based at Dubai World Central – the new 140 square kilometre airport and logistics city being constructed in Jebel Ali, Dubai. It is forming international partnerships at the highest level of industry with the aim of establishing one of the most innovative and successful businesses in the global aerospace industry within the next decade.

DAE's shareholders include EMAAR, ISTITHMAR, Dubai Airport Free Zone Authority (DAFZA), Dubai International Capital, DIFC Investments LLC, the Government of Dubai and AMLAK Finance.

Advisors:

First NZ Capital and Credit Suisse have acted as financial advisors and Russell McVeagh have acted as legal advisor to AIAL with respect to this transaction.

Deutsche Bank has acted as financial adviser and Mayne Wetherell has acted as legal adviser to DAE with respect to this transaction.

Attachments:

- Merger Implementation Agreement between Auckland International Airport Limited and Dubai Aerospace Enterprise (DAE) Limited.
- Co-operation Agreement between Dubai Aerospace Enterprise (DAE) Limited and Auckland Airport Limited (to be signed on completion).

To arrange an interview with AIAL or DAE representatives, please contact:**AIAL:**

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